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AN INDEX
OF
CASES AND CITATIONS
AND A COMPLETE
DIGEST OF ALL STATUTES CONSTRUED
IN THE
IOWA SUPREME COURT REPORTS.

PARTS I AND II.

COMPILED BY
HENRY BINMORE.

CHICAGO:
E. B. MYERS & COMPANY,
LAW BOOKSELLERS AND PUBLISHERS.
1887.

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PREFACE.

A table of cases and of citations, forming a complete record of the history of each case contained within a given series of reports, is an aid to the profession, well known throughout the several States and found to be useful. The table or index of cases, here presented, adds to its title the year of its delivery, by means of which can be learned the proximate date of the delivery of each opinion.

There is, perhaps, greater novelty in part II hereof. It has seemed to the compiler, that it must be convenient to the members of the profession to bring together, in a form easy to refer to, and in condensed shape, the interpretation of the statutes in such manner that the judicial construction may be beside the statute sought to be enforced or acted on. This has been attempted here.

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- Jan. 4, 1839, as to prom. notes; existence of firm provable without individual names of partners; *Ballard v. Ridgley*, Morr., 28.

- Jan. 10, recording law; mere filing of deed no notice; index and recording essential; Barney v. M'Carty, 15-510; Whalley v. Small, 25-188.
- Jan. 21, art. 9, §§ 2, 3; as to justices; does not allow justices to grant new trial; Helmich v. Johnson, Morr., 91.
- Jan. 25, § 13; stay bond taken as judgment confessed against principal and sureties; not invalid; Cavender v. Heirs, 5-186.
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- (*d.*) 4 *Bibb*, 261; 3 *J. J. Marsh.*, 133; *State v. Bougher*, 3 *Blackf.*, 307; *State v. Dole*, 3 *Blackf.*, 294.
- Chap. 81; usury; makes void promise to pay more than 10 per cent interest; *Sullivan v. McLenans*, 2-442.
- Chap. 81; as to interest; does not declare usurious contract void; but, prescribes penalty; *Haggard v. Atlee*, 1 Gr., 45. (*e.*)
- (*e.*) *De Wolf v. Johnson*, 16 *Wheat.*, 392, adopted.
- Chap. 86; trial of right of property seized under execution; no trial after sale and transfer; *Hughes v. Miller*, 2 Gr., 12.
- Chap. 86, art. 8, § 10; district court satisfied of error of transcript of justice of the peace; compel amendment; *Cook v. U. S.*, 1 Gr., 41.
- Chap. 86, art. 12, § 2; as to forcible entry; threats, or other circumstances of terror, make an entry forcible; *Harrow v. Baker*; 2 Gr., 203. (*f.*)
- (*f.*) *Atkinson v. Lester*, 1 *Scam.*, 407; *State v. Pollock*, 4 *Ired.*, 305.
- Chap. 86, art. 12, §§ 3, 6; complaint in forcible detainer good if containing all statutory averments; *Shaw v. Gordon*, 2 Gr., 377.
- Chap. 94; limitations; "out of the state" means such absence as entirely suspends power to commence action; *Penley v. Waterhouse*, 1-499. (*g.*)
- (*g.*) *Hackett v. Kendall*, 23 *Verm.*, 275; *Sage v. Hawley*, 16 *Conn.*, 105; *Vallandingham v. Huston*, 4 *Gilm.*, 125; *Ruggles v. Keeler*, 3 *Johns.*, 263; *Byrne v. Crowingshield*, 1 *Pick.*, 263; *King's adm'r v. Lane*, 7 *Mo.*, 241; *Ford v. Babcock*, 2 *Sandf.*, 524.
- Chap. 94, limitations; not pleadable in bar until six years after statute in effect; *Forsyth v. Ripley*, 2 Gr., 182; *Wile v. Matherson*, 2 Gr., 185; *Gordon v. Mounts*, 2 Gr., 243; *Hinch v. Weatherford*, 2 Gr., 244.
- Chap. 94, limitations; time lapsed under act of 1839, not included under; *Forsyth v. Ripley*, 2 Gr., 182.
- Chap. 94, limitations; not bar action for specific performance in six years; *Wright v. LeClaire*, 3-226; *Wright v. LeClaire*, 4 Gr., 420.
- Chap. 94, § 4, limitations of actions; not bar title bond; *Wright v. LeClaire*, 4 Gr., 423.
- Chap. 94, limitations; sec. 7 governs action for specific performance, twenty years; *Wright v. LeClaire*, 3-226; *S. C.*, 4 Gr., 420.
- Chap. 94, § 10, limitations; statute does not operate retrospectively on contracts; *Norris v. Slaughter*, 1 Gr., 347.
- Chap. 95, § 1, register's receipt for public land prima facie evidence of title; *Burlerson v. Teeple*, 2 Gr., 545.
- Chap. 99, one appointed guardian of a minor without father, is guardian both of person and property; *Wade v. Carpenter*, 4-364.
- Chap. 99, guardians; peremptory as to sales; guardian's oath not of record; sale void; *Cooper v. Sunderland*, 3-137.
- Chap. 103, the recording law does not require record of deeds and mortgages in separate books; *Switzer v. Knapps*, 10-74.

- Chap. 106, as to promissory notes, etc., enables assignee to sue, in own name, in the same kind of action as payee might; *Phillips v. Runnels*, *Morr.*, 395.
- Chap. 103, § 6, applies only to instruments assigned after due; *Stein v. Keeler*, 4 Gr., 87.
- Chap. 106, § 10, no need to prove signature of indorser unless it denied; *Steinhelber v. Edwards*, 2 Gr., 367.
- Chap. 110, as to partition, applies both the principles of law and equity to proceedings; *Wright v. Marsh*, 2 Gr., 106.
- Chap. 110 § 2, partition; attorney may verify petition, *Wright v. Marsh*, 2 Gr., 108.
- Chap. 110, §§ 19, 35, 36; partition is complete without conveyances; *Wright v. Marsh*, 2 Gr., 110.
- Chap. 110, § 36; partition; the section does not apply to proceedings *mala fide*; *De Louis v. Meek*, 2 Gr., 74.
- Chap. 112, § 6; declaration to be filed within ten days of second term, means general or special term; *Harman v. Goodrich*, 1 Greene, 28.
- Chap. 112, § 12, as to notice of special matter in defense, must be substantially complied with; *Chambers v. Games*, 2 Gr., 323.
- Chap. 112, § 18, too late to take non suit after jury retired; *Jones v. Fennimore*, 1 Gr., 144.
- Chap. 112, § 33; practice; costs in tort, in district court, in excess of recovery; plaintiff liable for all over that amount; *Britton v. Wright*, 1 Gr., 426.
- Chap. 112, § 43; bond or note is suable without declaration; *Jacobson v. Manning*, 2 Gr., 585.
- Chap. 112, practice; does not require re-assessment of damages etc., on appeal to district court; *Taylor v. Barber*, 2 Gr., 351.
- Chap. 124, § 5; roads; this section does not require receivers to report oath taken; *Dollarhide v. Comm'rs*, 1 Gr., 159.
- Chap. 126, action of right supersedes ejectment; *Kerr v. Leighton*, 2 Gr., 198.
- Chap. 126, § 53, action of right; plaintiff waiving all but nominal damages; no set off for improvements allowable; *Daniels v. Bates*, 2 Gr., 152.
- Chap. 126, action of right; plea in form of the statute admits possession; *Kerr v. Leighton*, 2 Gr., 199.
- Chap. 126, action of right; recovery may be upon title less than declared on; *Olive v. Daugherty*, 2 Gr., 393.
- Chap. 130, allows the appointment of a special deputy sheriff; *Wilford v. Miller*, *Morr.*, 406.
- Chap. 147, recording of map of addition etc., operated as a conveyance, in fee, of all portions expressed and intended for streets, alleys, ways, common or other public uses, to be held in the corporate name of town or city, for the uses and purposes set forth; *Pettingill v. Devin*, 35-355.
- Chap. 155 §§ 10, 28; these sections do not preclude the sheriff from making execution sales deed before redemption period expired; *Warfield v. Woodward*, 4 Gr., 887.
- Chap. 155, § 3; deed on sale under execution; prima facie evidence of regularity; *Humphry v. Beeson*, 1 Gr., 214.
- Chap. 162, § 13, vests probate judge with discretion to grant probate on testimony of one witness, no objection being made; *Barney v. Crittenden*, 2 Gr., 177.
- Chap. 162, subd. 3; probate court had jurisdiction of the sale of lands of decedent in any county of the territory; *Van Hord v. Ford*, 16-583.
- Chap. 162, administration; specific account of debts not an essential of a petition to sell realty; *Morrow v. Weed*, 4-132.
- Chap. 162, petition for administrator's sale of realty is sufficient if showing amount of debts, administration charges and personalty insufficient; *Morrow v. Weed*, 4-128. (h.)
- (A.) *Corwin v. Denning*, 11 Wend., 648; *Ford v. Walsworth*, 15 Wend., 450 and 19 Wend., 334, dist.; *Bloom v. Burdick*, 1 Hill, 139; *Corwin v. Merritt*, 3 Barb., 341; *Atkins v. Kinman*, 20

Wend, 241, citing *Betts v. Bagley*, 12 Pick., 582, dist.; *Underwood*, in re, 3 Cow., 59; *Kennedy v. Greer*, 13 Ill., 432; *Smith v. Hielman*, 1 Scam., 323, not in point; *Young v. Loraine*, 11 Ill., 625; *Ewing v. Higby*, 67 Oh., 340; *Paine v. Moreland*, 15 Oh., 435, applicable only to jurisdiction..

Chap. 162, sub ch. 10, § 3; wills; contemplates ascertainment of debts only before sale; *Little v. Sinnett*, 7-333.

Chap. 162; widow's power as executrix is extinguished by marriage; *Urban v. Hopkins*, 17-106.

Chap. 162, sub ch. 10, § 11; "publication three weeks successively," means a publication some day in each of three weeks, *Morrow v. Weed*, 4-132 (i).

(i.) *Early v. Doe*, 16 How., 615.

Chap. 162, § 11, administration; publication "three weeks, successively," of application for administrator's sale, complied with by publication July 31, Aug. 7 and 14; *Morrow v. Weed*, 4-133.

Chap. 162, child not mentioned in will; probate not prevented; *Lorieux v. Keller*, 5-210.

STATUTES, 1844.

Chap. 5, does not limit the quantity or value of property a religious society may acquire; *Miller v. Chittenden*, 2-361.

Chap. 6, § 6, expressly allowed writ of error for state in criminal cases; *State v. Johnson*, 2-550.

Chap. 6, § 14, verbal statement of demand entered on docket and writ are sufficient as a declaration before J. P.; *Taylor v. Barber*, 2 Gr., 352.

Chap. 20, repealed all laws for bail in civil cases; *Westbrook v. Westbrook*, 2 Gr., 598.

Chap. 21, revenue; lands subject to sale for tax in two years from Jan. 1, of the year of delinquency; *Noble v. State*, 1 Gr., 329.

Chap. 21, revenue; treasurer bound to receive delinquent tax for three years from Jan. 1 succeeding assessment; *Scott v. Babcock*, 3 Gr., 133; *Williams v. Gleason*, 5-284, overruling *Noble v. State*, 1 Gr., 326.

Chap. 21, revenue; no sale for delinquent tax until three years; *Scott v. Babcock*, 3 Gr., 149. (j.)

(j.) *Williams v. State*, 6 Blackf., 36; *Webster v. Reid*, U. S., 1850-1.

Chap. 21, revenue; § 13, not repealed by revenue law, 1847; *Ament v. Humphrey*, 3 Gr., 258.

Chap. 128, §§ 2, 3, as to licenses, not repealed by statute, 1848, ch. 67, § 6; *State v. Neeper*, 3 Gr., 338.

STATUTES, 1845.

Chap. 20, petition for change of venue must be verified by, at least, two respectable witnesses; *Cass v. State*, 2 Gr., 356.

Chap. 23, as to steamboat owners; not per se authorize attachment; *Eads v. Pitkin*, 3 Gr., 84.

Chap. 54, charter of Burlington; power to borrow for any public purpose is not power to loan credit; *Chamberlain v. Burlington*, 19-402.

Chap. 54, § 15, Burlington charter; power to grant licenses to retail liquors repealed by Code, 1851, § 986; *Burlington v. Keller*, 18-63.

STATUTES, 1846.

Chap. 1, as to fees on prosecution failing, does not extend to officers of court; *Culbertson v. Comm'rs*, 1 Gr., 417.

Chap. 5, § 4, wife's separate realty; deed, husband not joining, not valid; *Miller v. Wetherby*, 12-421.

Chap. 24, § 2, limiting lien of judgment to ten years applied to judgments then rendered; *Marshall v. M'Lean*, 3 Gr., 369; *Woods v. Maine*, 1 Gr., 275.

Chap. 33, § 4, clerk is to receive money to redeem land from execution sale; *Sample v. Davis*, 4 Gr., 118.

Chap. 34, judgment, a lien only on legal interest in realty and equitable interest on record in county; *Blain v. Stewart*, 2-382.

STATUTES, 1847.

Chap. 26, produced a vacancy as to district judge in each district, which continued until Apr. 5, 1847; *Allen v. Dunham*, 1 Gr., 92.

Chap. 81, general incorporation law; the statute and articles of association, under it, constitute a charter; *Donworth v. Coolbaugh*, 5-305.

Chap. 81, incorporation law; repeals only as to corporations in posse; *Donworth v. Coolbaugh*, 5-306.

Chap. 81, § 19, corporations; authorizing execution against stockholders, on failure to collect from the company, valid; *Hampson v. Weare*, 4-15.

Chap. 81, general incorporation law; originally intended to hold stockholders liable only for fraud or misconduct; *Donworth v. Coolbaugh*, 5-306.

Chap. 81, general incorporation act; did not affect the rights or liabilities of corporations existing or stockholders thereof; *Donworth v. Coolbaugh*, 5-305.

Chap. 81, by statute of 1847, each stockholder in a corporation is liable for debts to the amount of his stock at the time of debt contracted or subsequent; *Donworth v. Coolbaugh*, 5-306.

Chap. 81, § 19, corporations; execution returned nulla bona; execution issued against individual property of members on notice to officers of corporation; *Hampson v. Weare*, 4-15.

Chap. 81, general corporation law; judgment against stockholder of corporation, on facts extrinsic the judgment against the corporation, not opened up in supreme court; *Donworth v. Coolbaugh*, 5-303.

Chap. 94, limits the jurisdiction of J. P., in trespass quare clausum, to defendants in the county; *Chapman v. Morgan*, 2 Gr., 375.

Chap. 99, as to common schools, not in effect Apr. 6, 1847; *Calkin v. State*, 1 Gr., 68.

Chap. 99, as to school fund, recognizes the right of redemption on 16th sections; *Perrin v. Griffith*, 12-153.

Chap. 99, changing agency to convey county property did not repeal the power to convey; *Gourley v. Hankins*, 2-80.

Chap. 100, revenue; judgment must precede sale for tax; *Bellidorn v. Abel*, 6-16; *Williams v. Gleason*, 5-284; *Anson v. Stein*, 6-152.

Chap. 100, revenue; does not repeal § 13 of revenue law of 1844; *Ament v. Humphrey*, 3 Gr., 258.

Chap. 100, repealed by Code, 1851, § 28, and no authority to sell for taxes of 1848; *Bleidorn v. Abel*, 6-16; *Williams v. Gleason*, 5-284, *Anson v. Stein*, 6-152.

Chap. 193, and Code 1851, § 144, vote in counties as to sheep and swine at large, valid; *Dalby v. Wolf*, 14-230. (k.)

(k.) *Thorne v. Cramer*, 15 Barb., 112; *Bradley v. Baxter*, 15 Barb., 12.

STATUTES, 1848.

Chap. 52, § 1, creating two judicial seats and jury districts in Lee Co. not unconstitutional; *Trimble v. State*, 2 Gr., 410.

Chap. 67, § 6; not repeal Statute 1844, chap. 128, §§ 2, 3; as to licenses; *State v. Neeper*, 3 Gr., 388.

Chap. 106, practice; took effect Jan. 31, 1849; *Pierson v. Baird*, 2 Gr., 236.

Chap. 106, practice; all instructions of district judge to be in writing; *Pierson v. Baird*, 2 Gr., 236.

STATUTES, 1850-1.

Chap. 32, charter of Muscatine; not charge wharfage on raft landed within limits before sold or drawn out of water; *Muscatine v. Hershey*, 18-40.

Chap. 88, charter of town of Bellevue; provisions as to intoxicating liquors repealed by Code, 1851; *State v. Harris*, 10-442.

CODE, 1851.

Provisions to be liberally construed to affect its general purpose and spirit; *Strothers v. Steamboat*, 11-61.

Sect. 28, cl. 2, personal property includes money, goods, chattels, evidences of debt and things in action; *Graff v. Shannon*, 17-509.

Sect. 28, cl. 8; see Code, 1851, § 2485, post.

Sect. 28, repealed authority to sell for tax of 1848; *Bleidorn v. Abel*, 6-16; *Williams v. Gleason*, 5-284; *Anson v. Stein*, 6-152.

Sect. 28-33, as to guardians, etc., repealing Rev. St., 1843, 430, did not affect proceedings then pending; *Wade v. Carpenter*, 4-367.

Sect. 28-36, repeal all statutes enacted prior to and by the assembly of 1851, revised by or repugnant to the Code; *State v. Harris*, 10-442.

Sect. 29, prescribing mode of presenting indictment, directory merely; *State v. Art*, 6-512.

Sect. 31, operates to save a homestead right acquired under act of 1849; *Heltenstein v. Cave*, 3-294.

Sect. 72-3, seal of commissioner to take acknowledgments in other states must have the name of the state engraved thereon, so as to impress it on paper; *Gage v. Dub. etc., Co.*, 11-312.

Sect. 84, wife can contract with her husband only through a trustee; *M'Mullen v. M'Mullen*, 10-413.

Sect. 84, wife can sue her husband only by prochein ami; *M'Mullen v. M'Mullen*, 10-413.

Sect. 93, not necessary to present claim against a county to the county court before suit; *State v. Co. Judge*, 5-382.

Sect. 105; county judge may erect county buildings without prior vote of people; *State v. Napier*, 17-428.

Sect. 106, requires only unliquidated claims against a county to be presented to the auditing officer before suit; *Clapp v. Cedar Co.*, 5-44.

Sect. 108, does not require the seal of a county to its note; *Ring v. Johnson Co.*, 6-269.

Sect. 111, inability of county judge to act as to establishing highway must appear of record, to enable the prosecuting attorney to act for him; record not so showing is not evidence of legal establishment; *State v. R. R. Co.*, 50-693.

Sect. 114, authorizes aid to build railroads; *Dubuque Co. v. R. R.*, 4 Gr., 4.

Sect. 114, does not authorize counties to grant aid to railroad construction; *Stokes v. Scott Co.*, 10-168; *State v. Wapello Co.*, 13-395; *Myers v. Johnson Co.*, 14-49; *M'Millan v. Boyles*, 14-107; *Rock v. Wallace*, 14-594.

Sect. 114, et seq., railroad aid; submission of several propositions at one time will not invalidate election, *M'Millan v. Boyles*, 3-317.

Sect. 114 & 1857, ch. 193, authorizing vote in counties as to swine and sheep at large; valid; *Dalby v. Wolf*, 14-230. (L)

(L) *Thorne v. Cramer*, 15 Barb., 112; *Bradley v. Baxter*, 15 Barb., 112.

Sect. 118, sheriff's deed in foreclosure, by notice and sale, is not prima facie of the truth of recitals or regularity; *Seever v. Drennon*, 29-228.

Sect. 126, county judge may hold regular court on such days as he appoints; *Miles Co. v. Hamaker*, 11-208.

Sect. 131, gives a lien on realty of a defendant in a county where a transcript of the judgment is filed; *Seaton v. Hamilton*, 10-395.

- Sect. 131, no appeal lies from an order of county court establishing or changing county road; *M'Cune v. Swafford*, 5-553.
- Sect. 175-8, amendment of pleading, by leave, may be at any stage of proceeding; *Williams v. Miller*, 10-340.
- Sect. 411, deputy sheriff collecting on execution and refusing to pay over; remedy on sheriff's bond; *Brayton v. Town*, 12-347.
- Sect. 412, deputy district court clerk may administer oath; *Wood v. Bailey*, 12-46; *Finn v. Rose*, 12-566.
- Sect. 412, deputy district court clerk may approve attachment bond and issue writ; *Finn v. Rose*, 12-567.
- Sect. 460, as to listing etc., for taxation, in county of owner's residence, applies only to state and county taxation; *M'Gregor v. Branch Bank*, 12-80.
- Sect. 462, for taxing corporations through shares of stock does not apply to banking corporations; *M'Gregor v. Branch Bank*, 12-81.
- Sect. 462, property of railroad company taxable, for state and county, only through shares; *Homestead Co. v. Webster Co.*, 21-224.
- Sect. 462, to tax shares of non-resident stockholders in a railroad company is valid; *Faxton v. M'Cosh*, 12-529.
- Sect. 462, railroad grant lands not taxable, as lands, while they remain the property of the company to which granted; *Tallman v. Butler Co.*, 12-534.
- Sect. 503, purchase at tax sale creates a relation akin to mortgagor and mortgagee; *Crosthwait v. Byington*, 11-533.
- Sect. 503, tax deed, regular in form, prima facie of regularity of all prior proceedings; *Clark v. Connor*, 28-315.
- Sect. 503; tax deeds admissible, in first instance, to show title; *Clark v. Connor*, 28-315.
- Sect. 505; no recovery by purchaser at tax sale or taxes paid by him after redemption; *Byington v. Allen*, 11-4; *Byington v. Walsh*, 11-29; *Byington v. Bradley*, 11-79; *Byington v. Wood*, 12-479.
- Sect. 506; jurisdiction exists to foreclose tax deed or mortgage, without notice to purchaser or incumbrancer, not of record; *Clark v. Connor*, 28-316.
- Sect. 506; action to foreclose redemption from tax sale not barred until ten years and six months from date when the deed might issue; *Atkins v. Paige*, 50-667.
- Sect. 506-508; purchaser at tax sale can perfect title only by foreclosure, as of mortgage; *State v. Shaw*, 28-80.
- Sect. 508; decree foreclosing equity of redemption from tax sale, conclusive until reversed; *Gaylord v. Scarff*, 6-185.
- Sect. 509; wrongful sale for tax, damages the sum paid and interest; *Traer v. Filkins*, 10-564.
- Sect. 509; court having jurisdiction; decree foreclosing equity of redemption; payment of tax can not be shown; *Gaylord v. Scarff*, 6-186.
- Sect. 517, does not prohibit road district from building a bridge more than sixteen feet wide; *Rausch v. Davenport*, 6-455.
- Sect. 538; so much thereof as fixes a rule of damages on taking private property for public use repealed, Const., 1857, art. 1, § 18; *Deaton v. Polk Co.*, 9-536.
- Sect. 636; it is for the county judge of determine the sufficiency to acknowledgment to a town plat; *Scott v. Des Moines*, 64-441.
- Sect. 636, town plat filed for record by land owner and county judges approval thereon indorsed; heirs of owner could not thereafter claim title to land dedicated to public use thereby; *Scott v. Des Moines*, 64-441.
- Sect. 637, designation of a street on the plat of an addition to the city of Dubuque, hereunder, dedicated the fee thereof to the public; *Strange v. R'y Co.*, 54-671.
- Sect. 637, and Stat. Jan. 25th, 1830; fee of streets in municipality, in trust for public; *Milburn v. Cedar Rapids*, 12-252; *Hughes v. Miss. etc. R. R. Co.*, 12-266. (m.)
- (m.) *Trustees v. Haven*, 11 Ill., 554; *Hunter v. Middleton*, 13 Ill., 50; *Moses v. P. F. W. & Ch. R. R. Co.*, 21 Ill., 516.

- Sect. 665, allows the sale of meat, in cities, by any person on his own premises; *Davenport v. Kelly*, 7-104.
- Sect. 787, nephew not liable for support of pauper uncle; *Dawson v. Dawson*, 12-514.
- Sect. 788, 799; township trustees may proceed against child, in county court, to compel support of poor parent; *Boone Co. v. Buhl*, 9-277.
- Sect. 824, 828; highway; evidence to establish the posting of notice of petition to establish is not required to be written; *State v. Prine*, 25-223.
- Sect. 848; bastardy; complaint for maintenance must be in county court; *Miles Co. v. Hamaker*, 14-208.
- Sect. 895-7, do not require railroad companies to fence right of way; *Henry v. Dubuque etc. Co.*, 2-304.
- Sect. 935, prohibiting the sale of liquors by the glass etc., constitutional; *Our House v. State*, 3 Gr., 173; *Zumhoff v. State*, 4 Gr., 526.
- Sect. 936, repeals Stat., 1845, ch. 54, § 15, Burlington charter, as to licensing sale of intoxicating liquors; *Burlington v. Kellar*, 18-63.
- Sect. 942, 952; place equitable assignment of claims on legal basis; *State v. Butterworth*, 2-159; *Beebe v. Funkhouser*, 2-314;
- Sect. 949, makes warehouse receipts assignable and suable by assignee, subject to defenses; *Merch. etc. Bk. v. Hewitt*, 3-101.
- Sect. 949, 956; waiver of notice to assignor of non negotiable note includes waiver of demand; *Wilson v. Ralph*, 3-451.
- Sect. 951-2; claim for labor is open account; *Zugg v. Turner*, 8-227.
- Sect. 952; see § 942, ante.
- Sect. 952; open accounts are assignable in writing only; *Andrews v. Brown*, 1-156; *Williams v. Souter*, 7-448.
- Sect. 953; demand on maker of note not necessary to charge guarantor; *Knight v. Dunsmore*, 12-39; *Sabin v. Harris*, 12-92.
- Sect. 953; guarantor of note, not an original party, liable by notice of non payment within reasonable time; *Knight v. Dunsmore*, 12-37; *Sabin v. Harris*, 12-92.
- Sect. 954; simply declares the law merchant as to guarantor; *Sibley v. Van Horn*, 13-210.
- Sect. 954; not repealed by stat., Feb. 9, 1853, as to guarantors; *Sibley v. Van Horn*, 13-210.
- Sect. 954; insolvency of maker of note at maturity, prima facie charges guarantor without notice of non payment; *Knight v. Dunsmore*, 12-39. (n.)
- (n.) *Warrington v. Faber*, 8 East, 242; *Cannon v. Gibbs*, 8 S. & R., 202; see *Oxford Bk. v. Haynes*, 8 Pick., 423; 2 Taunt., 206; *Reynolds v. Douglas*, 13 Pet., 497; 1 Barn. & Cr., 10.
- Sect. 954; guarantor of note liable, no detriment from want of notice shown; *Knight v. Dunsmore*, 12-39.
- Sect. 955; repealed by Stat., 1853, ch. 103, § 3, and lex mercatoria revived as to notice to indorser of note; *Keater v. Hock*, 11-537.
- Sect. 956; see § 949, ante.
- Sect. 957; as to negotiable paper, repealed by Stat., 1853, ch. 108, § 3; *Edgar v. Greer*, 8-396.
- Sect. 947-65; not narrow assignability of claims; *Weire v. Davenport*, 11-53.
- Sect. 947-65; do not name every class of claim which is assignable; *Weire v. Davenport*, 11-53.
- Sect. 970; notice of surety to proceed to sue principal, to release the former, must be written; *Stevens v. Campbell*, 6-544.
- Sect. 974; abolishes the use of private seals; *Switzer v. Knapps*, 10-75.
- Sect. 975; all written contracts signed by a party bound import a consideration; *Linder v. Lake*, 6-167.
- Sect. 975; guaranty in writing imports a consideration, in the same manner as written instruments do; *Sabin v. Harris*, 12-88.

- Sect. 981; mechanic's lien has priority over all incumbrances not recorded before work commenced or material furnished; *Monroe v. West*, 12-121.
- Sect. 981; mechanic's lien, the words, as to material, "especially for any building," mean building and repairing, as distinct from unknown or general purposes; *Coates v. Shorey*, 8-419.
- Sect. 981; mechanic's lien; contemplates an agreement, with a proposed use of material; *Coates v. Shorey*, 8-414.
- Sect. 981; no mechanic's lien arises on general sales of lumber, from time to time; *Coates v. Shorey*, 8-417.
- Sect. 985; to establish a mechanic's lien, a contract and bill of particulars are essential; *Logan v. Attix*, 7-79.
- Sect. 1006; mechanic's lien; sub-contractor should proceed as in ordinary garnishment; *Parmenter v. Childs*, 12-26.
- Sect. 1006; mechanic's lien; sub-contractor need not sue out attachment v. principal contractor before writ of garnishment; *Parmenter v. Childs*, 12-26.
- Sect. 1009; mere promise of a subsequent purchaser to pay, will not discharge a mechanic's lien; *Mervin v. Sherman*, 9-333.
- Sect. 1050; contracts for the sale of school land are assignable; *Churchill v. Morse*, 23-232.
- Sect. 1050; record of assignment of contract for the sale of school land, in the office of commissioner, is not notice; *Churchill v. Morse*, 23-232.
- Sect. 1050; does not require record of assignment of contract for the sale of school lands in commissioner's office; *Churchill v. Morse*, 23-232.
- Sect. 1070; does not grant a right to pre-empt school land of the 500,000 acre grant; *Perrin v. Griffith*, 13-152.
- Sect. 1089-1107; contain all the rules etc. as to school fund commissioner; *State v. Fredericks*, 8-557.
- Sect. 1180; board of trustees of normal school of Oskaloosa is not a corporation, to sue and be sued; *Drake v. Trustees*, 11-55.
- Sect. 1193; mortgage of chattels not recorded, property retained by mortgagor; valid as against existing creditors with notice; *Miller v. Bryan*, 3-58; *Crawford v. Burton*, 6-478; *M'Gavran v. Haupt*, 9-83.
- Sect. 1207; wife may convey her interest in real estate in the same manner as other persons; *Grapengether v. Fejervary*, 9-172.
- Sect. 1208; attachment; the word "sureties" may be construed plural or singular; *Elliott v. Stevens*, 10-422.
- Sect. 1208; attachment bond not defective, there being but one surety; *Elliott v. Stevens*, 10-422.
- Sect. 1211; unrecorded deed valid against all save subsequent purchasers, for consideration, without notice; *Bell v. Evans*, 10-357.
- Sect. 1211; lien of attachment or judgment will not hold over a prior unrecorded deed; *Norton v. Williams*, 9-530; *Bell v. Evans*, 10-357. (o.)
- (o.) *Valtier v. Hinde*, 7 Pet., 252, 271; *Conrad v. Atl. Ins. Co.*, 1 Pet., 443; *Davis v. Onsbay*, 14 Mo., 170; *Valentine v. Havren*, 20 Mo., 133; *Jackson v. Tobin*, 4 Cow., 620.
- Sect. 1211; semble, purchaser at sheriff's sale, without any notice of unrecorded deed, is purchaser within the section; *Bell v. Evans*, 10-357.
- Sect. 1218; amended by Stat., 1854, ch. 48, § 2; certificate of acknowledgment of a deed made in sister State by a clerk of court, not showing the court to be a court of record and the clerk the custodian of its seal, independently of the seal attached, defective; *Fogg v. Holcomb*, 64-623.
- Sect. 1228; recording act; does not admit copy of U. S. patent as evidence; *Curtis v. Hunting*, 6-538.
- Sect. 1230; not intended to allow amendment of certificate of acknowledgment *O'Ferrall v. Simplot*, 4-398.
- Sect. 1230; allows grantor to contradict certificate of acknowledgment, for fraud in ob-

taining or for falsity, to show deed not acknowledged; *O'Ferrall v. Simplot*, 4-398. (p.)

(p.) *Jackson v. Schoonmaker*, 4 Johns., 169.

Sect. 1232; form of general warranty given includes covenant against liens or incumbrances outstanding at date of deed; *Funk v. Cresswell*, 5-65.

Sect. 1233-7; occupying claimants ousted may have improvements appraised and payment or, in default, acquire the title by paying its appraised value; *Dungan v. Von Puhl*; 8-266.

Sect. 1233-9, one out of possession has no action, under this chapter, against the holder of legal title, for improvements; *Claussen v. Rayburn*, 14-138; *Webster v. Stewart*, 6-401, *Banford v. Stein*, 24-595.

Sect. 1233-44, no execution issues against the rightful owner of land, obtaining possession, for improvements; *Webster v. Stewart*, 6-404.

Sect. 1239-40, lessee of land under lessor, having a life estate only, has no color of title for value of improvements; *Wiltse v. Hurley*, 11-478.

Sect. 1245, see § 1263, post.

Sect. 1247, husband's bond to convey homestead invalid, wife not joining; *Yost v. Devault*, 9-61.

Sect. 1247, homestead; mortgage is a conveyance under the statute; *Babcock v. Hoey*, 11-379.

Sect. 1249, "persons having the power to convey" and to bind the homestead for debt, has reference to the time of conveyance, not to the time of debt, to secure which the homestead is conveyed; *Stevens v. Myers*, 11-185.

Sect. 1263, 1245, homestead not to be taken for debt until husband and wife die without issue; *Dickson v. Chorn*, 6-30; *Floyd v. Mosier*, 1-512.

Sect. 1263-4, prescribe only the mode of descent of homestead; *Parsons v. Livingston*, 11-106.

Sect. 1270, landlord's lien attaches to all personalty on the premises in execution of the business of the tenancy; *Grant v. Whitwell*, 9-155; *Carpenter v. Gillespie*, 10-592.

Sect. 1271, action lies to landlord, for rent due and lien, without asking attachment; *Bartlett v. Gaines*, 11-96.

Sect. 1272, "property to be administered upon," includes real and personal estate; *Little v. Sিনnett*, 7-327.

Sect. 1309-10, foreign administrator can not sue without letters taken in Iowa; *M'Clure v. Bates*, 12-76.

Sect. 1336-59-61-2, prohibiting settlement by administrator without court's approval, applies only as between legatees, distributees or creditors and administrator; *Taylor v. Frink*, 2-87.

Sect. 1356, statutory limitations are no bar to proceeding to set aside administrators' sale absolutely void; ex. gr., for want of notice; *Good v. Norley*, 28-201; *Boyles v. Boyles*, 37-596.

Sect. 1359, requires a copy of writing or account to be annexed to claim against estate; *Baker v. Chittuck*, 4 Gr., 481.

Sect. 1361-2, see Code, 1851, § 1330, ante.

Sect. 1362, 1367, 1373, do not bar sci. fa., to revive a judgment against the executor of one deceased, to subject lands to its payment; *Carnes v. Crandall*, 4-153.

Sect. 1367, plaintiff in judgment against decedent barred, if claiming payment from personalty; *Carnes v. Crandall*, 4-153.

Sect. 1372, filing claim within six months gives priority over claim filed later, although it be not allowed within six months; *Chandler v. Hockett*, 12-270; *Brought v. Griffith*, 16-32.

Sect. 1373, equitable relief contemplated, by this section, reaches the case of a non-resident, ignorant of debtor's death, to whom he has been over indulgent, the debt being just and unpaid and estate unsettled; *M'Cormack v. Cook*, 11-269.

- Sect. 1373, equitable relief contemplated will not include the claim of one negligent in presenting his demand against estate under administration; *Ferrall v. Irvine*, 12-54.
- Sect. 1394, limits the admeasurement of dower, in the county court, to ten years; *Starry v. Starry*, 21-255.
- Sect. 1394 et seq., county court may admeasure dower; *Shawhan v. Loffer*, 24-225.
- Sect. 1408-10, husband may deprive wife, by will, of all interest in his estate except dower; *Clark v. Griffith*, 4-409.
- Sect. 1410, dower set off does not impair widow's rights as heiress; *Ralston v. Ralston*, 3 Gr., 537.
- Sect. 1410, descent; husband and wife dying intestate, without issue; dower, as such, not enlarged, in favor of the survivor; *Huston v. Seeley*, 27-201.
- Sect. 1417-8, property of the wife, under control of the husband, does not vest in him so as to give a right, to his heirs and representatives, therein superior to the right of the wife; *Lower v. Lower*, 46-526.
- Sect. 1453, wife can hold a chose in action as separate property; *Peck v. Hendershott*, 14-44.
- Sect. 1455, action lies against both husband and wife for cooking utensils, used by family; *Fiinn v. Rose*, 12-567.
- Sect. 1456-9, remedy provided for an abandoned wife cumulative; *Smith v. Silence*, 4-327.
- Sect. 1470-4, marrying persons having no license; a misdemeanor; *State v. White*, 4-456.
- Sect. 1480-1, jurisdiction of divorce not confined to marriages or causes occurring within the county or state; *Smith v. Smith*, 4 Gr., 269.
- Sect. 1480-1, as to divorce; intend a residence fixed, without present intent to remove; *Hinds v. Hinds*, 1-39.
- Sect. 1482, cl. 7; divorce; for threatened injury only where life endangered; *Beebe v. Beebe*, 10-139; *Carruthers v. Carruthers*, 13-267.
- Sect. 1485, enlarges and extends the powers of the chancellor as to divorce and alimony; *Jolly v. Jolly*, 4-502, *Cole's* edit.
- Sect. 1485, allows alimony to consist of a specific portion of property; *Jolly v. Jolly*, 1-13.
- Sect. 1485; alimony on divorce may be of husband's property, real or personal, in absolute ownership; *Inskeep v. Inskeep*, 5-221.
- Sect. 1485, gives power to modify decrees of divorce a vinculo matrimonii only; *Jungk v. Jungk*, 5-543.
- Sect. 1485, manner etc. of modification of divorce decree mainly discretionary; *Jungk v. Jungk*, 5-543.
- Sect. 1485, as to change of decree for alimony, does not authorize a change after the death of payor; *O'Hagan v. Exec'r*, 4-517.
- Sect. 1488, 1489; misrepresentation of minor as to age or engaging in business as adult; exception to statute, as to disaffirming at majority; *Oswald v. Broderick*, 1-381.
- Sect. 1491-2-8; father dead; mother entitled to earnings of minor child; *Cain v. Devitt*, 8-121.
- Sect. 1508; limitations; not apply to guardian's sales made prior to passage of statute; *Cooper v. Sunderland*, 3-121.
- Sect. 1565-6, 1598, 1601-6, 2201-3, 2206, 3038; certiorari issues to review contempt proceeding; *First Cong. Ch. v. City*, 2-72.
- Sect. 1509; court may order a special term at any regular term, and call a grand jury; *State v. Nash*, 7-365.
- Sect. 1577-8; record of judgment by confession signed by judge without formal entry of approval; substantially complies with section; *Wright v. Howell*, 35-294.
- Sect. 1578; directory; confession of judgment not void court failing to sign record at

- term after entry, when entered in vacation; *Vanfleet v. Phillips*, 11-560; *Edwards v. Pitzer*, 12-607.
- Sect. 1580; record to be corrected, after term expired, only as to some evident mistake; *Eno v. Hunt*, 8-437.
- Sect. 1583; postponement of special term by clerk, in vacation, on written order of judge regular; *State v. Ballenger*, 10-369.
- Sect. 1585, allowing interchange of judges, not inconsistent with constitution; *State v. Stingley*, 10-490.
- Sect. 1598; contempts; refers to act or conduct in presence, actual or constructive, of court; *State v. Dunham*, 6-254; *State v. Anderson*, 40-207.
- Sect. 1598-1608; contempts; allows no presumption in favor of regularity of proceeding; *Skiff v. State*, 2-551.
- Sect. 1615; attorney, not to be suspended without charges, notice and day in court; *State v. State*, 7-500.
- Sect. 1647; talesmen are called to complete panel of grand jury in place of absentees; *State v. Pierce*, 8-233.
- Sect. 1647, 1777, as to selecting, drawing and summoning petit jurors, directory; *Clausen v. La Franz*, 1-241. (q.)

(q.) *People v. Supervisors*, 4 Seld., 317.

- Sect. 1659, not bar action against county judge, for county money received, not in line of duty, in three years; *Poweshiek Co. v. Ogden*, 7-180.
- Sect. 1659; failure of county judge to pay over money received for town lots not an omission of official duty within the section; *Poweshiek Co. v. Ogden*, 7-179.
- Sect. 1659, bars dower as for recovery of real property; *Phares v. Walters*, 6-113.
- Sect. 1659-60; title to land by fraud; action by equitable owner within five years from discovery; *M'Lenan v. Sullivan*, 13-526.
- Sect. 1659-74; statute of limitations, retrospective; *Phares v. Walters*, 6-113.
- Sect. 1663, as to commencement of suit, intends to define that time when the question is material; *Hargan v. Burch*, 8-311.
- Sect. 1663; suit commenced when notice is placed in the hand of the officer to serve; *Butcher v. Brand*, 6-237.
- Sect. 1672, limitations; "hereafter" refers to date of act in effect, not its passage; *Bennett v. Bevard*, 6-89; *Phares v. Walters*, 6-115.
- Sect. 1673; limitations; refers only to cases; period of limitation not enlarged by Code; *Bennett v. Bevard*, 6-90.
- Sect. 1676; parties to action; those having the legal interest; *Allen v. Newbery*, 8-70.
- Sect. 1680; members of association too numerous to bring all before court; action against one or more for all; *Killer v. Tracey*, 11-531.
- Sect. 1681; indorser of note after due, may be joined in action with maker; *Jones v. Wilson*, 11-160.
- Sect. 1681; maker and guarantor by separate instruments can not be joined as defendants; *Griffin v. Grundy Co.*, 10-226.
- Sect. 1681-2, to be applied consistently with common law as to joint contracts; *Morrison v. Stoner*, 7-495.
- Sect. 1690; partners may be sued in the name of the individuals or of the firm; *M'Closkey v. Strickland*, 7-261.
- Sect. 1693; one may sue in his own name for an injury by breach of instrument for his belief executed to another; *Tucker v. Silver*, 9-263.
- Sect. 1696, does not take away right of action, from parent, for seduction of minor child; *Stevenson v. Belknap*, 6-100.
- Sect. 1698, has no reference to actions against partnerships; *Childs v. Hyde*, 10-296.
- Sect. 1698, 2502; action for libel does not abate by death of defendant; *Carson v. M'Fadden*, 10-92.

- Sect. 1698-2502, trespass for injury to the person does not abate by death of defendant; *M'Kinlay v. M'Gregor*, 10-112; *Campbell v. Fox*, 11-321.
- Sect. 1699-2502; action for an injury to the person, maintainable against administrator of the trespasser; *Carson v. M'Fadden*, 10-92; *M'Kinlay v. M'Gregor*, 10-112.
- Sect. 1701, contemplates suit in the county where defendant resides; *Langworthy v. Root*, 10-261; *Weil v. Lowenthal*, 10-578.
- Sect. 1701-2; "defendants," as to change of venue, means persons with actual, real and positive interest; *Troy, etc. Co. v. Bowen*, 7-468.
- Sect. 1703, attachment of property in county not of defendant's residence; no jurisdiction if defendant a resident and demands venue changed; *Langworthy v. Root*, 10-261.
- Sect. 1704, action on contract must be in the county of performance or in which a defendant actually resides, *Troy, etc. Co. v. Bowen*, 7-467; *Armstrong v. Bowen*, 35-537.
- Sect. 1704; suit where contract to be performed applies only where personal service is had; *Hedrick v. Brandon*, 9-319.
- Sect. 1705, as to venue of suits against corporations, in a county where an agency exists, is permissive; *Dean v. White*, 5-268; *Baldwin v. Miss. etc. R. R. Co.*, 5-519.
- Sect. 1708, does not prevent a change of venue on second application where improper conditions were imposed on the first and no change in fact was had; *Eckles v. Kinney*, 4-541.
- Sect. 1715, requires original notice to notify when to appear and plead and that default will be taken; *Mobley v. Phillips*, 8-564, *Cole's edit.*
- Sect. 1715, original notice should state the amount of demand and the nature of the cause of action; *Moody v. Taylor*, 12-72.
- Sect. 1721, 1723, return of service of original notice, by leaving a copy, not showing it left at the usual place of residence of defendant or naming the person with whom it was left, is fatally defective; *Clark v. Little*, 41-499.
- Sect. 1721, 1723, it is only on personal service that the return must state whether a copy of petition was required; *Nealey v. Redman*, 5-389.
- Sect. 1723, does not require return of service of notice to show, affirmatively, a copy of petition was demanded; *Watts v. White*, 12-334.
- Sect. 1723; original notice personally served; return must show if a copy of petition was required and to what point; *Woodward v. Whitescarver*, 6-3.
- Sect. 1725; service on defendant by publication must be complete ten days before appearance term; *Broghill v. Lash*, 3 Gr., 360.
- Sect. 1727, prescribes on whom service on a corporation may be made; not that the action must be where the person served resides; *Baldwin v. Missis. & M. R. R. Co.*, 5-519.
- Sect. 1727; trackmaster of a railroad is not an officer or clerk contemplated for service of notice; *Richardson v. B. & M. R'y Co.*, 8-262.
- Sect. 1728; semble, after dissolution of a partnership notice must be served on each member of the late firm; *Stephens v. Parkhurst*, 10-71.
- Sect. 1732, 2428, 1974, 2493-9, do not authorize a party to the record to serve notice of appeal; *Marion Co. v. Stanfield*, 8-407.
- Sect. 1733; abolishes technical forms of action and pleading; *Helchew v. Hamilton*, 3 Gr., 597.
- Sect. 1733; abolition of forms of action does not abolish the rules and principles of pleading; *Rawson v. Guiberson*, 6-509; *Baltzell v. Nosler*, 1-588.
- Sect. 1733, 2493-9, as to service of notices; applicable only to notices required in suit; *Hollingsworth v. Snyder*, 2-436.
- Sect. 1733, 2493-9; as to service of notice, not apply as between parties in business transactions; *Hollingsworth v. Snyder*, 2-436.
- Sect. 1740; answer alleging usury in contract undented; taken true; *Alexander v. Doran*, 13-284,

Sect. 1740, claims for damages for tort may be set off; *Campbell v. Fox*, 11-319; *Dunham v. Dennis*, 9-546.

Sect. 1740; set off; demands acquired after intestate's death not set off in actions by administrator, for money due; *O'Connor v. Guthrie*, 11-82.

Sect. 1742; affirmative allegations of pleadings not responded to; taken as true; *Plummer v. Roads*, 4-591.

Sect. 1742; allegation of payment in answer not affirmative; to be taken as true; *Stacy v. Stichton*, 9-401; *Poweshiek Co. v. Mickel*, 10-77; *Latham v. Alexander*, 12-607.

Sect. 1744, as to waiver of oath to answer, does not apply in chancery; *Armstrong v. Scott*, 3 Gr., 493; *White v. Hampton*, 9-184; *S. C.*, 10-242.

Sect. 1744-7, provided a uniform system of practice, for both law and equity; *Shepard v. Ford*, 10-504; *Culbertson v. Luckey*, 13-17.

Sect. 1745; set off not a pleading under the section; sworn to has no weight as evidence; *Thrift v. Redman*, 13-26; see *Gilbert v. Mosier*, 11-49.

Sect. 1750, does not require tax books to be set out as exhibits, if they are proffered; *Games v. Robb*, 6-196.

Sect. 1751; different causes of action may be joined; but, they should be in several counts; *Sands v. Wood*, 1-266.

Sect. 1754, abolishes demurrer for formal defects; *Cole v. Porter*, 4 Gr., 511.

Sect. 1754; demurrers must be special; *Crittenden v. Steele*, 3 Gr., 539; *Babbitt v. Walters*, 3 Gr., 565.

Sect. 1754; formal defects not demurrable; *Crittenden v. Steele*, 3 Gr., 539.

Sect. 1755, permits amendmennts liberally, upon terms; *Harvey v. Spaulding*, 7-424.

Sect. 1755, does not give a right to amend without restraint; *Harvey v. Spaulding*, 7-424.

Sect. 1756-59, as to amendments, applicable in law or equity; *Brink v. Morton*, 2-418.

Sect. 1759; amendment of pleading allowable at any stage; *State v. Mayor etc.*, 18-389.

Sect. 1763, amended by Act 1857-8, ch. 127, not intended to continue every case to second term; *Duncan v. Hobart*, 8-338.

Sect. 1772, does not preclude a jury demanded, for refusal to advance fee; *Hine v. Sweney*, 3 Gr., 512.

Sect. 1772; fact tried by court, unless jury demanded; *Hine v. Sweney*, 3 Gr., 511.

Sect. 1775, as to jury, does not apply to criminal cases; *State v. Shelledy*, 8-504.

Sect. 1776-7, 1693, do not change the rule that a trustee may be party to foreclose trust deed; *Tucker v. Silver*, 9-263.

Sect. 1778; as to calling witness after evidence in, is designed to avoid sharp practice; *M'Manus v. Finan*, 4-287.

Sect. 1780-1; jury; separation after verdict agreed on, not necessarily vitiate; *Cook v. Walters*, 4-75. (r.)

(r.) See on subject generally. *Ragland v. Wells*, 6 Leigh, 1; *Blake v. Blossom*, 3 Shep., 394; *Harrison v. Rowas*, 4 Wash., Hill, ex p., 3 Cow., 355; *Erwin v. Saunders*, 1 Cow., 243; *Smith v. Thompson*, 1 Cow., 221; *Oram v. Bishop*, 7 Halst., 153; *Horton v. Horton*, 2 Cow., 589; *Wright v. Burchfield*, 3 Ham., 352.

Sect. 1791-2; mandatory that all instructions be given in writing, if demanded by party; *Stratton v. Paul*, 10-140.

Sect. 1793, does not require evidence to be set out in finding of fact; *Houston v. Trimble*, 3 Gr., 574.

Sect. 1793; trial by judge; finding of facts not in writing unless upon demand; *Gallinger v. Vale*, 6-389.

Sect. 1794, 2115, referees stand in place of court, as to the particular questions submitted; *Schohmer v. Lynch*, 11-463.

Sect. 1793 report of referees may be set aside, in whole or part, and re-reference had; *Dunn v. Starkweather*, 6-468.

- Sect. 1797, authorizing one not a judge de jure to act as court, unconstitutional; Winchester v. Ayres, 4 Gr., 104; Petty v. Durall, 4 Gr., 120.
- Sect. 1801, 2285; plaintiff may dismiss his suit, before J. P., before set off claimed in writing or answer docketed; Kuhn v. Bone, 10-383.
- Sect. 1805-6; limits signing of bill of exceptions to the trial term, unless by consent or otherwise; Claggett v. Gray, 1-21.
- Sect. 1810; declaratory only; affidavits of jurors not to impeach verdict; Cook v. Sypher, 3-486; Davenport v. Cummings, 15-219; Abel v. Kennedy, 3 Gr., 47; State v. Douglas, 7-413; Butt v. Tuthill, 10-585; Hall v. Robinson, 25-91; Cowles v. C., R. I. & P. R. Co., 32-515; Lloyd v. M'Clure, 2 Gr., 139. (s.)
- (s.) Willing v. Swasey, 1 Brown, 123; Vaire v. Delaval, 1 Term R., 11; Owen v. Warburton, 1 New R., 326; Dana v. Tucker, 4 Johns., 487; People v. Columbia Com. Pleas. 1 Wend., 297; Bailey v. Chesapeake Ins. Co., 3 Gill & J., 473; Blader v. Cockey, 1 Har. & M'H., 230.
- Sect. 1810; only voluntary affidavits of jurors admissible on motion for new trial; State v. Grady, 4-462.
- Sect. 1810; affidavits of jurors admissible to show misconduct in finding; Forshee v. Abrams, 2-579; Manix v. Malony, 7-31; Ruble v. M'Donald, 7-90; Stewart v. Burl. etc. R. R. Co., 11-66.
- Sect. 1811, 2556, vesting discretion as to costs does not apply to final judgment; Hyde v. Cole, 1-108.
- Sect. 1815, allows the court to determine ultimate rights of plaintiffs or defendants and enter judgment accordingly; Bradshaw v. Hedge, 10-406.
- Sect. 1815, changed the common law rule, to allow judgment against one or more joint and several contractors without recovery against all; Greenough v. Shelden; 9-508.
- Sect. 1815; action against several; judgment may be against one and against plaintiff for costs of other defendants; Eyre v. Cook, 9-187.
- Sect. 1821; pleading inconsistent with stipulation to enter decree to be stricken from files; Vall v. Stone, 13-286.
- Sect. 1821, error to strike from files stipulation for decree upon terms, save for good cause shown; Vall v. Stone, 13-285.
- Sect. 1821-2; judgment, may be entered in vacation by consent of parties; Hattenback v. Hoskins, 12-111; O'Hagen v. O'Hagen, 14-267.
- Sect. 1826, full compliance essential to jurisdiction by publication of notice; Abell v. Cross, 17-174.
- Sect. 1826; failure, in affidavit for service by publication, to show facts proving diligence to ascertain name and residence of party, will reverse judgment; Little v. Chambers, 27-525.
- Sect. 1826, requires record proof of published notice sent to defendant, or that his residence not discoverable; Broghill v. Lash, 3 Gr., 360.
- Sect. 1826; failure in affidavit, for service by publication, to show facts proving diligence to learn name and residence of party not make deed void on collateral attack; Little v. Chambers, 27-525.
- Sect. 1826, no judgment by default, on publication, without proof of mailing etc.; Byington v. Crosthwait, 1-148; Pinkney v. Pinkney, 4 Gr., 424; Carr v. Kopp, 3-81.
- Sect. 1827, confers discretionary power as to terms of setting aside default; Perkins v. Davis, 3 Gr., 236.
- Sect. 1827, requiring affidavit of merits etc., to set aside judgment by default, applies only to default lawfully taken; Messenger v. Marsh, 6-493.
- Sect. 1831, sole right of defendant in default is to cross examine plaintiff's witness as to damages; Cook v. Walters, 4-72; Goddard v. Cunningham, 6-401; Loeber v. Delahaye, 7-478.
- Sect. 1831, does not disturb defendant's right to address jury, he not being in default as to damages; Hutchinson v. Sangster, 4 Gr., 343.

- Sect. 1831, cutting off address of defendant to jury, in case of default, of doubtful validity; *Hutchinson v. Sangster*, 4 Gr., 343.
- Sect. 1839, as to confession of judgment must be strictly pursued; *Edgar v. Greer*, 7-139; S. C., 10-279.
- Sect. 1846, authorizes a municipal corporation to be summoned and held as garnishee; *Wales v. Muscatine*, 4-307.
- Sect. 1846-1851; as to attachment, in effect the same as Rev. St., 1843, 78, §§ 1-3 and refer to distinctions between actions *ex contractu* and *ex delicto*; *Johnson v. Butler*, 2-544.
- Sect. 1847, separate petition for attachment, applies to writ sought after suit brought; *Van Winkle v. Stevens*, 9-265.
- Sect. 1848; attachment only against foreign corporations, and persons defrauding creditors or absconding; *Lockard v. Eaton*, 3 Gr., 544.
- Sect. 1851, as to attachment, does not control proceeding on contract; *Lord v. Gaddis*, 6-59.
- Sect. 1860-70; garnishee in default must excuse default and show merit in defense on showing cause against execution; *Fifield v. Wood*, 9-250.
- Sect. 1873; petition in form prescribed; interest only from date of suit; *Barton v. Smith*, 7-85; *Haven v. Baldwin*, 5-503.
- Sect. 1892, garnishment; refers to personal property in hands of third parties; *Seymour v. Kramer*, 5-286.
- Sect. 1892; garnishment; this section does not refer to equitable interests of debtor in real estate; *Seymour v. Kramer*, 5-286.
- Sect. 1892-3; railroad aid bonds in ownership of company subject to levy of execution; *Hetherington v. Hayden*, 11-341.
- Sect. 1893, does not make an equity of redemption in chattel mortgage subject to levy under execution; *Campbell v. Leonard*, 11-494. (t.)
- (z.) 3 Wend., 500; 4 Cow., 461; 1 Pick., 309; 1 Pick., 399; 4 Mass., 464; 3 Watts, 358; 2 A. K. Marsh., 331; 2 N. H., 13; 8 Miss., 342; 1 Ves., Jr., 430.
- Sect. 1896, judgment creditor of city may elect to receive scrip; but he is not to be compelled to receive it; *State v. Davenport*, 12-342, 344; *Oswald v. Thedinga*, 17-14.
- Sect. 1898; exemption from execution; "habitually earns his living," does not apply to tools of mechanic or books of physician; *Perkins v. Wisner*, 9-321.
- Sect. 1902, exemption from replevy not extend to non resident; *Newell v. Hayden*, 8-143.
- Sect. 1903-4, 2485; judgment is a lien on equitable interests in realty; *Harrison v. Kramer*, 3-561.
- Sect. 1910; summary foreclosure of mortgage by sheriff; surplus in his hands subject to levy of execution against mortgagor; *Payne v. Billingham*, 10-363.
- Sect. 1926; after foreclosure sale, by order of court, there is no redemption; *Kramer v. Rebman*, 9-121.
- Sect. 1926-30; for redemption of realty from foreclosure of mortgage sale, not affect prior contracts; *Malony v. Fortune*, 14-420. (u.)
- (u.) *Scoby v. Gibson, Ind.*, Am. L. Reg., Feb. 1862. *Howard v. Bugbee*, 24 How., 461.
- Sect. 1945, assignee of judgment debtor may exercise all rights of redemption of debtor; *Stoddard v. Forbes*, 13-298.
- Sect. 1947, as to recording sheriff's deed twenty days after redemption period expired; not apply to one with actual notice or purchasing with fraudulent intent, to defeat title; *Harrison v. Kramer*, 3-562.
- Sect. 1947; publicity of sheriff's sale is constructive notice only to those taking title from or through judgment debtor; *Hultz v. Zollars*, 39-592.
- Sect. 1977; motions, notices and rulings constituted part of record; *Lemonds v. French*, 4 Gr., 124.

- Sect. 1977, constitutes motion for new trial part of record; *Mayo v. Deaver*, 1-221.
- Sect. 1977, motion to dissolve attachment is a part of the record; *Ellsworth v. Moore*, 5-489.
- Sect. 1993, that title of bona fide purchaser at sheriff's sale not affected by reversal of judgment, is for the benefit of purchaser and grantees; he not estopped to rely upon title adverse to that acquired at sheriff's sale; *Wood v. Young*, 38-100.
- Sect. 1993, modifies the common law, to allow replevin of property in custodia legis, but exempt from seizure; *Cooley v. Davis*, 34-129.
- Sect. 1993, does not provide that property levied on can not be replevied unless shown to be exempt; *Smith v. Montgomery*, 5-372.
- Sect. 1995, property exempt from levy, by §§ 1898-9, may be replevied; *Funk v. Israel*, 5-450.
- Sect. 2003; replevin; judgment de retorno habendo, on verdict for defendant; *Jansen v. Effey*, 10-230.
- Sect. 2001; replevin; defendant may have judgment for value of property replevied on dismissal of suit; *Funk v. Israel*, 5-454.
- Sect. 2001, verdict in replevin for defendant for return of property and damages for detention, etc.; *Jansen v. Effey*, 10-230.
- Sect. 2010; see Code, 1851, § 2094-5, post.
- Sect. 2068; see Code, 1851, § 2094-5, post.
- Sect. 2071-5; for summary foreclosure of mortgage not inconsistent with constitution, 1846; *Boyd v. Ellis*, 11-100.
- Sect. 2071-5; summary foreclosure; sheriff not acting judicially; agent of parties; *Boyd v. Ellis*, 11-101.
- Sect. 2084; bill to enjoin foreclosure, foreclosure decreed without cross bill; *Westfall v. Lee*, 7-14.
- Sect. 2080-7; holder of note secured by mortgage may waive the security and bring action on note; *Banta v. Wood*, 32-474.
- Sect. 2086, 2094-5 place vendor and vendee, as to remedy, in position of mortgagor and mortgagee; *Pierson v. Davis*, 1-34.
- Sect. 2088-91 seem to favor foreclosure of mortgage on default of interest; *Bahr v. Arndt*, 9-40.
- Sect. 2089-93; foreclosure of mortgage; amounts and dates of incumbrances to be ascertained and paid in order of priority; *Kramer v. Rebman*, 9-124.
- Sect. 2091, foreclosure sale must be substantially complied with or sale void; *Grapengeth v. Fejervary*, 9-172.
- Sect. 2091; refusal to sell in parcels, and sale in excess of debt will invalidate foreclosure sale; *Grapengeth v. Fejervary*, 9-172.
- Sect. 2094; bond for title may be foreclosed as a mortgage, and the amount due recovered in one action; *Hartman v. Clarke*, 11-511.
- Sect. 2094-5, 2068, 2010, take away no rights of vendee as to remedy; *Page v. Cole*, 6-158.
- Sect. 2094-5; see Code, 1851, § 2086, ante.
- Sect. 2097; the force of this statute, as to foreclosure of mortgage, is not diminished by Act, 1858, ch. 24, p. 20; *Fanning v. Kerr*, 7-460; *Collins v. Hopkins*, 7-464.
- Sect. 2097; deed of trust may be for benefit of grantee or another; *Fanning v. Kerr*, 7-461.
- Sect. 2113; arbitrators may award all costs against a party; *Ratliff v. Mann*, 5-425.
- Sect. 2115; see Code, 1851, § 1794, ante.
- Sect. 2116; collection of back freights by officers of steamboat, plying as connecting line with railroad, is matter relative to transportation of property; *C., B. & Q. R. R. Co., v. Steamboat*, 10-467 (v).
- (v.) *Schooner v. Worthington*, 17 Oh., 460; *Steamboat v. Johnson*, 2 Oh. St., 142.
- Sect. 2116-9, gives prior lien, for supplies to steamboat, for one year, against boat or owners, and suit may be within a year; *Haight v. Steamboat*, 4-473.

Sect. 2116-21, boat lien; liberally construed to effect purpose; *Strother v. Steamboat*, 11-61.

Sect. 2121, as to remedy v. boats etc.; warrant and seizure thereunder necessary to jurisdiction; *Ham v. Steamboat*, 2-461. (*u.*)

(*w.*) *Paine v. Mooreland*, 15 Oh., 435.

Sect. 2124, bond executed and returned, by sheriff, for release of boat valid, though approval not formally indorsed; *White v. Tisdale*, 12-76.

Sect. 2125, execution may issue against obligors on bond to release boat from seizure (§ 2124) without formal entry of boat's discharge; *White v. Tisdale*, 12-70; *Ogden v. Ogden*, 13-177.

Sect. 2177; attorney or agent may verify petition for sci. fa.; *Wright v. Parks*, 10-344.

Sect. 2179, 2182; mandamus issues to enforce duty resulting from office, trust or station; *State v. Co. Judge*, 5-381.

Sect. 2179, 2188, mandamus; no set form of words is essential in an information for the writ, *Chance v. Temple*, 1-187.

Sect. 2183; mandamus; the phrase "party beneficially interested," to be liberally construed; *State v. Bailey*, 7-397.

Sect. 2207-9; on dissolution of injunction court to, at once, assess damages; *Woods v. Irish*, 14-428.

Sect. 2245-8 habeas corpus is no proceeding by which to revise a judgment after conviction and execution awarded; *Platt v. Harrison*, 6-31.

Sect. 2269; docket entry of process by J. P.; directory; *Houston v. Walcott*, 1-90.

Sect. 2269, subd. 11, does not require J. P. to docket motions as to evidence offered; *Miller v. O'Neal*, 9-449.

Sect. 2284, as to J. P., reducing oral pleadings to writing, directory; *Siunamon v. Melbourne*, 4 Gr., 310.

Sect. 2285; see § 1801, ante.

Sect. 2293-6; "judgment by default" strictly technical; only for want of an appearance; *Rhodes v. De Bow*, 5-265.

Sect. 2328; no appeal from verdict before J. P.; *Guthrie v. Humphrey*, 7-24; *Kimble v. Riffin*, 2 Gr., 245; *Brown v. Scott*, 2 Gr., 454.

Sect. 2330; appeal from J. P. must be perfected within twenty days; *M'Brearty v. Dyer*, 6-530.

Sect. 2340-1; appeal from J. P. returnable only at regular term; *Coon v. Matthews*, 10-291.

Sect. 2341-2; to give a court jurisdiction of appeal, notice or appearance must be shown; *M'Quillan v. Windsor*, 6-397.

Sect. 2343 appeal from J. P.; ruling of J. P., on demurrer reviewable; *Oleson v. Hendrickson*, 12-225.

Sect. 2345-6; defendant appealing from judgment of J. P. v. him, to avoid costs of appeal, must proffer amount of judgment and costs; *Powell v. Stage Co.*, 2-51.

Sect. 2349; as to writ of error to J. P., applies to civil cases only; *Part of lot v. State*, 1-509.

Sect. 2362; forcible entry etc., district court has only appellate jurisdiction thereof; *Dicks v. Hatch*, 10-384; but, see *Easton v. Fleming*, 51-305.

Sect. 2362, 2371; title can not be investigated in forcible entry etc.; *Webster v. Stewart*, 6-405.

Sect. 2372; forcible entry etc.; to rely on the statute of limitations possession must be peaceable, uninterrupted and to the knowledge of adverse holding against the real owner; *Fultz v. Black*, 3-570.

Sect. 2388, repealed the common law rule that a co-defendant can not testify for his co-defendant on separate trial, unless acquitted or not infamous on conviction; *State v. Nash*, 10-86, overruling *State v. Nash*, 7-347. (*x.*)

(*x.*) *Moffett v. State*, 2 Humph., 99; *U. S. v. Henry*, 4 Wash. C. C., 228; *Garret v. State*, 6 Mo., 1; *Blannerhasset v. State*, 1 Walker (Miss.), 7.

- Sect. 2388, 2391-1; a negro not a competent witness where a white person is a party, if objected to; *Motts v. Usher*, 2-84.
- Sect. 2390; one partner may be called by adversary to prove his own liability and partnership; *Holmes v. Budd*, 11-189.
- Sect. 2391-4; see § 2388, ante.
- Sect. 2394; disqualification of negro as witness not to be waived by one party to suit; *Motts v. Usher*, 2-83.
- Sect. 2396, as to interest of witness; exception to general rule that those interested may not testify; *Cutter v. Fanning*, 2-583.
- Sect. 2399; part of declaration etc. in evidence; the whole may be called for; *Dougherty v. Posegate*, 3-88; *Williams v. Donaldson*, 8-111.
- Sect. 2399; detached declaration etc. in evidence; other declarations, etc., admissible to explain, etc.; *Dougherty v. Posegate*, 3-88; *Williams v. Donaldson*, 8-111.
- Sect. 2404; proof of standard writing must precede proof of handwriting by comparison; *Hyde v. Woolfolk*, 1-162.
- Sect. 2406, a party to the record is competent to prove matter preliminary to the introduction of account books; *Hastings v. Devoran*, 7-319.
- Sect. 2409-10, of frauds; the phrase "no evidence of any such contract is competent," the same as "no action shall be brought," in 29 Car. 2, § 4; *Westheimer v. Peacock*, 2-531.
- Sect. 2414; object to permit protest in evidence without proof of seal and signature; *Bradshaw v. Hedge*, 10-404.
- Sect. 2414; "usual protest" is the protest of *lex mercatoria*; *Bradshaw v. Hedge*, 10-404.
- Sect. 2438; authentication of record; merely regulates admission of evidence; *Latourett v. Cook*, 1-5.
- Sect. 2439, authentication of judgment of J. P. from sister state must show rendition and certification by an acting judicial officer; *Guesdorf v. Gleason*, 10-496.
- Sect. 2428, as to means of proof of service of notice, not exclusive; a mere provision prescribing means sufficient; *Shawhan v. Loffer*, 24-228.
- Sect. 2455, as to depositions, answered if it be shown the commissioner was issued by the clerk, under seal of court; *Plummer v. Roads*, 4-590.
- Sect. 2485, 26, cl. 8; judgment lien attaches on all legal and equitable interests in realty; *Harrison v. Kramer*, 3-561; *Cook v. Dillon*, 9-412; *Swan v. Yapple*, 35-249.
- Sect. 2493-9; see Code, 1851, § 1733, ante.
- Sect. 2502, action for libel does not abate by death of defendant; *Carson v. M'Fadden*, 10-92; *Campbell v. Fox*, 11-321.
- Sect. 2506, mistake as to name of obligee in bond not vitiate; *Charles v. Haskins*, 11-333.
- Sect. 2508, murder does not embrace abortion; *Abrams v. Foshee*, 3-278.
- Sect. 2511; attachment bond, penalty insufficient; amendable; *Elliott v. Stevens*, 10-422.
- Sect. 2518; prayer in form given; interest only from date of action commenced; *Haven v. Baldwin*, 5-505; *Butcher v. Brand*, 6-237.
- Sect. 2518; prayer for judgment in form prescribed; interest accrued before suit not recoverable; *Haven v. Baldwin*, 5-505.
- Sect. 2519; defendant in replevin may set up non residence to defeat claim of exemption; *Newell v. Hayden*, 8-143.
- Sect. 2519, in replevin plaintiff may set up non residence of defendant against exemption from execution; *Newell v. Hayden*, 8-143. (*y.*)
- (*y.*) See *Prindle v. Carruthers*, 1 E. D. Smith, 425; *People v. Ryder*, 2 Kern., 433.
- Sect. 2520; action to quiet title may be in the nature of an action of right; *Fejervary v. Langer*, 9-161.
- Sect. 2520; semble, to quiet title against one claiming only a lien not lie under; *Fejervary v. Langer*, 9-161.

- Sect. 2522-64; repealed by Rev., 1860, § 4187; *Ripley v. Gifford*, 11-368.
- Sect. 2528; defendant demanding jury and refusing to advance fee; plaintiff must pay or secure; *Hine v. Sweney*, 3 Gr., 512.
- Sect. 2556; see Code, 1851, § 1811, ante.
- Sect. 2584, enticing female etc., from a person in legal charge of her person; the statute means those in whose family she resides and who care for and protect her; *State v. Ruhl*, 8-452.
- Sect. 2586; seduction; "character" is used as signifying that which the person really is, not what she is reputed to be; *State v. Andre*, 5-394.
- Sect. 2586; seduction; "chaste character" extends to mind and sentiments of person; *State v. Andre*, 5-397; *State v. Boak*, 5-431.
- Sect. 2597; assault or assault and battery; criminal; *State v. Twogood*, 7-254.
- Sect. 2611; indictment charging a breaking etc. with intent to commit larceny is sufficient; *State v. Jones*, 10-208.
- Sect. 2619; embezzlement by servant; indictment should aver an act without consent of employer or master; *State v. Foster*, 11-291.
- Sect. 2630, as to forged bank bills, means bill purporting to be issued by a company or bank named, having authority etc.; *State v. Calendine*, 8-296.
- Sect. 2634; "possession" of counterfeit coin may be by deposit in a secret place, under control; *State v. Washburn*, 11-245.
- Sect. 2634; conjunction used in this section is copulative in form, disjunctive in sense; *State v. Meyers*, 10-449.
- Sect. 2634; conviction though the particular offense be brought within but one clause of the section; *State v. Meyers*, 10-449.
- Sect. 2643; proof of existence of bank, in a criminal case, may be by general reputation; *State v. Pierce*, 8-234; *State v. Calendine*, 8-296.
- Sect. 2647-57; it is not bribery, within the statute, to give facilities for the public convenience of a county as an inducement to move the county seat; *Dishon v. Smith*, 10-220; *Hawes v. Miller*, 56-398.
- Sect. 2693; elections; essence of offense under this section is that one voted with knowledge of disqualification; *State v. Douglass*, 7-415.
- Sect. 2695; election; person charged under this section must wilfully vote being under disability named; *State v. Douglass*, 7-415.
- Sect. 2695; election; indictment for illegal voting must point out the disability; *State v. Douglass*, 7-415.
- Sect. 2709; lewd cohabitation; indictment must charge that the parties are not married one to the other; *State v. Clinch*, 8-401.
- Sect. 2712; as to leasing house for prostitution etc.; consent expressly given or silent acquiescence in the use of the premises essential to convict; *State v. Abrahams*, 4-543.
- Sect. 2712; leasing house for prostitution; failure to take steps to prevent the illegal use is not permitting it; *State v. Abrahams*, 4-543.
- Sect. 2721, keeping house for purposes of gambling; indictment following the statute is sufficient; *State v. Cure*, 7-481.
- Sect. 2721; keeping a gambling house and permitting others to play therein; indictment not bad for duplicity; *State v. Closter*, 10-454.
- Sect. 2721; defendant suffering gambling in house he then and there kept, permitted it in place under his control; *State v. Middleton*, 11-247; see *State v. Kaufman*, 59-273.
- Sect. 2724, depositor and loser of money on wager may recover before stakeholder pays over; *Shannon v. Baumer*, 10-211.
- Sect. 2724; contract, consideration, in whole or part, property won or lost on game or wager; void; *Sipe v. Finarty*, 6-395.
- Sect. 2730-7, as to banking, in force until enactment of banking laws under const., 1857, art. 8; *Reynolds v. Nichols*, 12-402.

Sect. 2759, declaring obstruction of highway a nuisance, not repealed by Statute, 1858, ch. 154, § 26; *State v. Berry*, 12-59.

Sect. 2759-66; prosecution etc. for creating and continuing nuisance should be under this chapter (150); *State v. McGrew*, 11-112; *State v. Collins*, 1-142.

Sect. 2827; warrant for arrest, substantially following form in this section, sufficient; *State v. Devine*, 4-445.

Sect. 2881; juror disqualified by unqualified opinion formed or expressed; *State v. Henkle*, 6-382 (z).

(*) *Goodwin v. Blachley*, 4 Ind., 483, dist.

Sect. 2890; as to challenge of grand jurors; applies only to defendants who have opportunity before the jury is impaneled; *Norris' House v. State*, 3 Gr., 518.

Sect. 2914; indorsement "presented to the" court, "in the presence of the grand jury" sufficient to show presentation by foreman in presence of his fellows; *Wrockledge v. State*, 1-170; *Dixon v. State*, 4 Gr., 381.

Sect. 2914; as to indorsement of presentation on indictment; directory; *State v. Axt*, 6-511; *State v. Jolly*, 7-17.

Sect. 2916, does not dispense with necessity of prominent features of a criminal charge; *State v. Calendine*, 8-297.

Sect. 2917, allows to charge the same offense in different forms, in different counts; *State v. Cokely*, 4-479; *State v. Twogood*, 7-252; *State v. McClintock*, 8-293.

Sect. 2953; demurrer to indictment must distinctly specify grounds; *Benham v. State*, 1-543.

Sect. 2961, secures to defendant the right to withdraw his plea of guilty, and substitute a different plea; *State v. Kraft*, 10-330.

Sect. 2961; court may, at any time, allow a plea of "guilty" to an indictment to be withdrawn, and substitute plea "not guilty"; *State v. Kraft*, 10-331.

Sect. 2964, 2966, as to placing names of jurors in a box to draw from; directory; *State v. Gillick*, 7-308.

Sect. 2971; oath to jury in misdemeanor "the truth to speak upon the issue joined;" sufficient; *Wrockledge v. State*, 1-174.

Sect. 3011; court may keep jury together, in charge, or allow a separation; *State v. Gillick*, 10-100.

Sect. 3023; jury reporting inability to agree as to law of case; further instructions proper; *State v. Pitts*, 11-346.

Sect. 3029; as to calling jury at stages of case; directory; *State v. Burge*, 7-257.

Sect. 3054, limits the power of district court, on appeal from J. P. in criminal case to reversal in two events; *State v. Nicholls*, 5-414.

Sect. 3059, judgment in misdemeanor may be rendered in absence of defendant; *State v. Hughes*, 4-556.

Sect. 3088; supreme court can review criminal case only on error, not on appeal; *Ellis v. State*, 3-217.

Sect. 3089, does not allow the state a writ of error in criminal case; *State v. Johnson*, 2-549.

Sect. 3094, as to stay in criminal case; judges of supreme court to order allowance of appeal and prescribe terms; *State v. McCloskey*, 4-499.

Sect. 3211, bail bond reciting "feloniously killing two persons;" not void; *State v. Klingman*, 14-407.

Sect. 3219; recognizance to appear and answer indictment may be acknowledged and approved in open court; *State v. Elgin*, 11-218.

Sect. 3229, clerk of district court has no power to take bail in vacation; *State v. Carothers*, 11-273.

Sect. 3240; sci. fa. on forfeited recognizance is not the exclusive remedy; *State v. Gorley*, 2-54.

Sect. 3272; change of venue for prejudice of judge, discretionary; *State v. Gordon*, 2-412. (a.)

(a.) *Findley v. State*, 5 Blackf., 576; *Spencer v. State*, 8 Blackf., 281; *Millison v. Holmes*, 1 Smith, (Ind.), 55; *Boswell v. Flickheart*, 8 Leigh, 364; see 1 *Humph.*, 154; 1 *Harring.*, 382; 5 *Harring.*, 582; *M'Goon v. Little*, 1 *Gilm.*, 42, and *Barrows v. People*, 11, Ill., 121, under different statute.

Sect. 3273; on change of venue the record, for transmittal, is the original indictment, papers in cause and copy of orders of record; *Sharp v. State*, 2-457.

Sect. 3322, does not give jurisdiction to J. P. of information for solemnizing marriage without license; *State v. White*, 4-451.

Sect. 3358, 3361; on appeal from J. P., in misdemeanor, on alleged ground the evidence does not justify conviction, trial de novo is not a right; *Baurose v. State*, 1-376, overruling *Kuner v. State*, Dec. T, 1854.

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Chap. 5; commissioners to locate county seat of Black Hawk county, have no power to bind the county by contract; *Overman v. Kerr*, 17-493.

Chap. 13, § 29, no power in county judge to pledge swamp land, to erect public buildings; *State v. Napier*, 7-431.

Chap. 24; indictment ignored; court may tax costs against prosecuting witness, for want of probable cause; *State v. Donnell*, 11-452.

Chap. 31 (Rev. 1860, ch. 53, art. 3), granting railroad right of way, makes payment condition precedent of entry; *Henry v. Dub. etc. R. R. Co.*, 10-543.

Chap. 31; right of way act; "construction" means making road bed, and preparation and readiness for safe and convenient use; *Preston v. Dub. etc. R. R. Co.*, 11-17.

Chap. 31; right of way act; railroad acquires only a right to take and remove timber, necessary to construct and repair; *Preston v. Dub. etc. R. R. Co.*, 11-17.

Chap. 31; right of way act; railroad company does not acquire title to timber on land taken; *Preston v. Dub. etc. R. R. Co.*, 11-17.

Chap. 31; as to railroad right of way; does not require action to be brought where the agent served resides; *Baldwin v. Miss. & M. R. R. Co.*, 5-519.

Chap. 31, § 17; track master is not a president or secretary of railroad company for service of notice; *Richardson v. B. & M. R'y Co.*, 8-262.

Chap. 31; on appeal from assessment of damages for the construction of a railroad over land, re-assessment by jury; *Borland v. M. & M. R'y Co.*, 8-149.

Chap. 31; appeal from assessment, ad quod damnum, as to location of railroad; trial on merits; *M. & M. R. R. Co. v. Rosseau*, 8-376.

Chap. 31; railroad right of way; the statute does not change rule as to liability of master for injury to employe; *Sullivan v. Miss. etc. R. R. Co.*, 11-428; *Hunt v. R. R. Co.*, 26-270; *Peterson v. Mining Co.*, 50-674; *Houser v. R. R. Co.*, 60-232.

Chap. 37, § 5; interest; the word "contract" refers to the original agreement, not to the evidence of it; *Smith v. Cooper*, 9-382; *Garth v. Cooper*, 12-365.

Chap. 37; usury; contract usurious; judgment for the principal sum, without interest or costs; *Gower v. Carter*, 3-251.

Chap. 37; interest; one not a party nor privy to the usurious contract, with authority, can plead usury therein; *Hollingsworth v. Swickard*, 10-387; *Frost v. Shaw*, 10-492; *Powell v. Hunt*, 11-432; *Perry v. Kearns*, 13-175. (b.)

(d.) *Stephens v. Minor*, 8 Ind., 352; *Campbell v. Johnston*, 4 Dana, 177.

Chap. 58, as to change of venue before J. P., applies to both criminal and civil cases; *Miller v. State*, 4-505.

Chap. 58, allows more than one change of venue in a criminal case, triable before J. P.; *State v. Minski*, 7-337.

Chap. 61; dower as at common law; *Huston v. Seeley*, 27-200.

Chap. 77, § 9; charter of Keokuk; confers power to confirm or reject taxes other than to pay for property taken for streets; *State v. Keokuk*, 9-441.

- Chap. 77; amending charter of city of Keokuk, did not confer power to subscribe to capital stock of railway company; *Williamson v. Keokuk*, 44-89. (c.)
 (c.) *Gelpcke v. Dub.* 1 Wall., 175; *Myer v. Muscatine*, 1 Wall., 384, dist.
- Chap. 77, § 9; charter of Keokuk; not authorize council to set aside assessment of damages for opening street; *State v. Keokuk*, 9-440.
- Chap. 78, § 1; J. P., acting judicially for mayor, must record facts giving jurisdiction; *Muscatine v. Steck*, 7-507.
- Chap. 84, contemplates the right of a debtor to pay debts in property, in good faith; *Cowles v. Rickets*, 1-586.
- Chap. 84, attachment; does not give the writ in action not founded on contract on the ground that defendant has property he refuses to apply; *Raver v. Webster*, 3-510.
- Chap. 106, in relation to certain state roads, establishing 46, vacating others, etc., not invalid under provisions "every law shall embrace but one object" etc.; *State v. Co. Judge*, 2-284.
- Chap. 108, as to guarantor does not repeal code, 1851, § 954; *Sibley v. Van Horn*, 13-210.
- Chap. 108, § 1, does not require an answer denying any indebtedness and execution of note sworn to; *Lyon v. Bunn*, 6-51.
- Chap. 108, supposed maker of bill or note may disprove that it is his deed; *Terhune v. Henry*, 13-108.
- Chap. 108, § 3, adopted days of grace for negotiable paper; *Edgar v. Greer*, 8-396.
- Chap. 108, § 3, allowing grace on notes, etc., does not require notice to, or demand on, assignor of non-negotiable note; *Wilson v. Ralph*, 3-452.
- Chap. 108, § 3; note not negotiable; no grace; *M'Cartney v. Adm'rs etc.*, 11-86.
- Chap. 108, § 3, repealed Code, 1851, § 955, and revived *lex mercatoria*, as to notice to indorsers of notes; *Keater v. Hock*, 11-537.
- Chap. 152; except for the assessment, equalization and levy of tax, repealed by Rev., 1860, ch. 45, art. 1; *Homestead Co. v. Webster Co.*, 21-225.
- Chap. 152, § 7; property of railroad company taxable, for state and county purposes, only through shares; *Homestead Co. v. Webster Co.*, 21-224.

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- Chap. 45, § 8; intoxicating liquors; prosecution for violation should be under Code, 1851, ch. 150; *State v. M'Grew*, 11-112; *State v. Collins*, 11-142.
- Chap. 45, intoxicating liquor; grand jury has no jurisdiction of unlawful sale to minor; *State v. Koehler*, 6-399.
- Chap. 45, § 6; prohibitory law; information, for giving away, should charge consideration of purchase of property; *State v. Finan*, 10-20.
- Chap. 45, § 8; to suppress intemperance; indictment need not negative lawful sale; *State v. Beneke*, 9-208; *State v. Collins*, 11-142; *State v. Jordan*, 39-388.
- Chap. 45, § 8; to suppress intemperance; indictment need not aver liquor kept to sell in violation of law; *State v. Collins*, 11-142; *State v. Jordan*, 39-388.
- Chap. 45, § 6; prohibitory liquor law; indictment may charge several violation in separate courts; conviction and penalty proceed on each, and judgment on each to be separate; *State v. Leis*, 11-418.
- Chap. 45, prohibitory law; selling or giving away, as clerk or agent of owner, or volunteer without reward; no defense; *State v. Finan*, 10-22.
- Chap. 45; for suppression of intemperance valid; *Santo v. State*, 2-191; *Sanders v. State*, 2-277; *State v. Bryan*, 4-332. (d.)
- (d.) *Fisher v. M'Girr*, 1 Gray, 1; *N. Y. v. Mln*, 11 Pet., 102; *Thurlow v. State*, 5 How. 504; *Brown v. Maryland*, 12 Wheat., 419; *M'Culloch v. M'd.*, 4 Wheat., 437; *Gibbons v. Ogden*, 9 Wheat., 1; *Wilson v. Blackbird etc. Co.*, 2 Pet., 251; *Pierce v. N. H.*, 5 How., 504.
- Chap. 45, prohibition law; part of § 1, and all §§ 3, 4, 16 repealed, by amendatory act of Jan. 22. 1857; *Stoneman v. Whaley*, 9-391.

- Chap. 45, § 6, for the suppression of intemperance not repealed; *State v. Donehey*, 8-396; *State v. Van Pelt*, 11-90.
- Chap. 45, § 6, prohibitory liquor law not repealed by act of 1856-7, ch. 157; *State v. Beneke*, 9-206; *Stoneman v. Whaley*, 9-391.
- Chap. 45, § 15, prohibitory liquor law; does not change the rule to inquire into the consideration of note past due when transferred; *Barlow v. Scott*, 12-65.
- Chap. 48, prescribing time etc., of notice of presentation of petition for election to remove county seat, directory; *Deshon v. Smith*, 10-217. (c.)
- (c.) *People v. Cook*, 14 Barb., 261, 290; *Marchant v. Langworthy*, 6 Hill, 646; *People v. Peck*, 11 Wend., 604.
- Chap. 48, § 2, see Code, 1851, § 1218, ante.
- Chap. 50; Muscatine liable for damages by change of street grade, ascertained as by stat., 1855, ch. 50; *Cole v. Muscatine*, 14-298.
- Chap. 57, §§ 7, 8; charter of Davenport, makes it a duty to levy, etc. a special tax to pay interest on prior indebtedness not met by ordinary levy and mandamus will issue to enforce; *State v. Davenport*, 12-340; *State v. Davenport*, 12-344.
- Chap. 57, § 4; creating Davenport a road district; imposes the liabilities of a road district; *Rausch v. Davenport*, 6-450.
- Chap. 72, to relocate seat of government, in force July 1, 1855; *Scott v. Clark*, 1-79.
- Chap. 86, as to party wall, declaratory of the common law; *Zuyenbuhler v. Gilliam*, 3-395.
- Chap. 91, requiring demand by city for tax before sale; in absence of demand deed not sustained; *Lathrop v. Howley*, 50-42.
- Chap. 92, mill site; mill owner alone can prosecute ad quod damnum; *Hunting v. Curtis*, 10-153.
- Chap. 106, as to taking effect of laws, unconstitutional; *Scott v. Clark*, 1-79.
- Chap. 110, swamp land; county judge has power to pledge for public building only on vote of people; *State v. Napier*, 7-431.
- Chap. 128, as to interest on municipal bonds, does not grant power to issue railroad aid bonds; *State v. Wapello Co.*, 13-398.
- Chap. 128, did not contain a grant of power to municipal corporations to issue bonds in aid of railway co's; it simply restricted the exercise of power before given; *Williamson v. Keokuk*, 44-80.
- Chap. 140, as to removal of the county seat of Keokuk county, not repealed by act of Jan. 22, 1855, on the same general matter; *Casey v. Harned*, 5-14.
- Chap. 141, to extend boundaries of Kossuth co.; attaching land to Webster co. a necessary means; title not vitiate the act; *Duncombe v. Prindle*, 12-10.
- Chap. 141, extending boundaries of Kossuth co., actually attached townships 90, 91, of ranges 27-30 to Webster co., from Humboldt co., *Duncombe v. Prindle*, 12-8.
- Chap. 148; judge refusing to sign bill of exceptions; two or more attorneys or officers of court may; *Simon v. Weigel*, 10-506.
- Chap. 148; bill of exceptions; attorney of party can not sign, on refusal of the judge so to do; *Simon v. Weigel*, 10-506.
- Chap. 156, applications for pre-emption of swamp land not determinable on applicant's affidavit; *Givens v. Decatur Co.*, 9-280.
- Chap. 156, to prevent trespass on swamp lands, makes the judgment of the district court final; *Lampson v. Platt*, 1-557.
- Chap. 161, § 3, does not make necessary a written opinion, on affirmance of overruling demurrer, in all parts, below; *Tomlinson v. Emerson*, 2-614, *Cole's* edit.
- Chap. —; homestead; unmarried man furnishing necessities for brothers and brother's wife living with him; not head of family; *Whallen v. Cadman*, 11-227.

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- Chap. 1, whereby the state sought to resume lands granted to Iowa Central Air Line Railroad Co., not divest title acquired from company; *Courtright v. R. R. Co.*, 35-399, 400.

- Chap. 15, § 14; charter; not authorize city of Mount Pleasant to ordain setting up, etc., gambling device a misdemeanor and to punish; *City v. Breeze*, 11-399.
- Chap. 20; charter of Wapello City; confers power on council to equalize assessment of taxes within its limits and the power is not taken away, but is confirmed, by Stats. 1876, ch., 116, 1878, ch. 99, and Code, 1873, § 829; *Kinsey v. Sweeney*, 63-255; see *Garrett v. Wells*, 63-257.
- Chap. 191; service of notice by publication; not repealed by ch. 240; *Robertson v. Young*, 10-202.
- Chap. 240, service of notice by publication; not inconsistent with ch. 191; *Robertson v. Young*, 10-202.
- Chap. 240, to authorize service by publication; affidavit that the person to be served is not to be found in the state a pre-requisite; *Bradley v. Jamison*, 46-69.
- Chap. 240 § 1; affidavit, for service by publication, "defendant is not a resident of the state" etc.; sufficient without averment non inventus; *Byrne v. Roberts*, 31-320.
- Chap. 23, extra session; charter of Ottumwa; does not confer on council exclusive jurisdiction of violation of liquor law; *State v. Gurlock*, 14-445.
- Chap. 18, extra session, to amend act to incorporate Muscatine, void; *Morford v. Unger*, 8-95.

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- Chap. 90; witness may state value of property, before and after change of grade of street; *Dalzell v. Davenport*, 12-440.
- Chap. 90; witness not to give opinion as to the effect of change of street grade on value of property; *Dalzell v. Davenport*, 12-441.
- Chap. 90, § 8; damages by change of street grade not limited to injury to improvements; *Dalzell v. Davenport*, 12-439; *Hempstead v. Des Moines*, 52-305.
- Chap. 115, repealing pre-emption right on swamp land; saving clause refers to date of act in force; *Roger v. Vass*, 6-408.
- Chap. 127; see Code, 1851, § 1763, ante.
- Chap. 152; appeal from assessment of damages and benefits, for extension of street, opens the case on its merits in the district court; *Runner v. Keokuk*, 11-546.
- Chap. 185, § 19; charter; Des Moines has no power to authorize its mayor to make deed under city tax sale, save by vote of electors; *State v. Shaw*, 28-79.
- Chap. 185, §§ 23, 27, charter of Des Moines; care of streets a corporate matter; *Clark v. Des Moines*, 19-221.
- Chap. 190, gives an appeal to the supreme court in all criminal cases triable before J. P.; *Muscatine v. Steck*, 7-507.
- Chap. 190, appeals from J. P.; plea "guilty" may be withdrawn in the district court and plea "not guilty" entered; *State v. Kraft*, 10-331.
- Chap. 193; see Code, 1851, § 114 ante.
- Chap. 193, § 2; retrospective; *Dalby v. Way*, 14-232.
- Chap. 193; officer does not need process to sell swine etc. taken; *Dalby v. Wolf*, 14-232.
- Chap. 210; consolidating charter of Dubuque etc. valid; *Davis v. Woolnough*, 9-107.
- Chap. 210; charter of Dubuque, empowered council to lease market stalls, without submission to corporator's vote; *Dubuque v. Miller*, 11-587.
- Chap. 210; revised charter of Dubuque, authorizes collection of tax, by suit in court of competent jurisdiction; *Dubuque v. Harrison*, 34-165.
- Chap. 221, as to licensing sale of liquors; void; *State v. Geebrick*, 5-496.
- Chap. 221, licensing sale of liquors; unconstitutional; *State v. Geebrick*, 5-491; *State v. Boak*, 6-580, *Cole's* edit.
- Chap. 240, clerk of district court has no power to order service of original notice by publication; no jurisdiction is acquired, if the order be not made by court or district or county judge; *Abell v. Cross*, 17-174; *Bardsley v. Hines*, 33-158; *Roger v. Foster*, 62-324.

- Chap. 240, affidavit the basis of order of service of original notice by publication must appear of record, to validate service; *Bardsley v. Hines*, 33-159.
- Chap. 240, § 1; to serve by publication it is not necessary to show non residence with ownership of property in the state, where one evades service; *Easley v. Redpath*, 9-308.
- Chap. 251, repeals § 7, of Stat., Jan. 28, 1857, ch. 190, as to appeals in criminal cases; *Muscatine v. Steck*, 7-507.
- Chap. 251, does not give an appeal from an order to punish for contempt; *State v. Dunham*, 6-252; *Cong. Ch. v. Muscatine*, 2-69.
- Chap. 254, § 1; assignment for creditors; not void for failure of assignee to make inventory; *Wooster v. Stanfield*, 11-131; *Price v. Parker*, 11-144.
- Chap. 258, does not legalize municipal bonds issued ultra vires; *Williamson v. Keokuk*, 44-82.

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- Chap. 16, consolidating charter of Dubuque etc.; void; *Davis v. Woolnough*, 9-106; *Hetherington v. Bissell*, 10-147; *Baker v. Steamboat*, 14-216.
- Chap. 16, Dubuque city court; unconstitutional; *Hetherington v. Bissell*, 10-147.
- Chap. 22; acknowledgment of chattel mortgage by agent of mortgagor sufficient until statute passed (Rev. 1860, §§ 2251-4), if mortgagor personally known to officer; *Sowden v. Craig*, 26-163. (*f.*)
- (*f.*) *Fulweiler v. Baugher*, 15 S. & R., 47; *Combe's ca.*, 9 Coke, 76.
- Chap. 24, concerning mortgages, in effect, Mar. 19; *Thatcher v. Haun*, 12-311.
- Chap. 24; see Code, 1851, § 2097, ante.
- Chap. 24; concerning mortgages; "hereafter," refers to date the statute in effect, not the date of its passage; *Thatcher v. Haun*, 12-311.
- Chap. 24, 29, takes away right of foreclosure of mortgage by sheriff, save by action; *Fanning v. Kerr*, 7-400; *Collins v. Hopkins*, 7-464.
- Chap. 24, 29; foreclosure of mortgage; not interfere with contract; *Fanning v. Kerr*, 7-400; *Collins v. Hopkins*, 7-464.
- Chap. 30, § 2, curing defects of acknowledgments, applies to all deeds actually recorded; *Brinton v. Seevers*, 12-392.
- Chap. 30, as to defective acknowledgments; invalid wherever it interferes with rights vested at the date it took effect; *Newman v. Samuels*, 17-549; *Brinton v. Seevers*, 12-387.
- Chap. 30, § 2, curing defects of acknowledgments; invalid as to prior deeds; *Brinton v. Seevers*, 12-391.
- Chap. 30, § 2; legalizing acknowledgment of deeds duly recorded, does not require the record to be a literal copy of the instrument, but, it must embody every material part thereof and identify its subject matter certainly; *Fogg v. Holcomb*, 64-624.
- Chap. 30, cures defective acknowledgments certified previous to the statute taking effect; *Shearer v. Mills*, 35-503.
- Chap. 33, conveyance by wife valid without acknowledgment; *Simms v. Hervey*, 19-287. (*g.*)
- (*g.*) *Kerns v. Peeler*, 4 Jones L., 226; *Green v. Branton*, 1 Dev. Eq., 504; *Jackson v. Gilchrist*, 15 Johns., 89; *Constantine v. Van Winkle*, 6 Hill, 177; *S. C.*, 10 N. Y., 422; *Martin v. Dwelly*, 6 Wend., 9, 22; *Catlin v. Ware*, 9 Mass., 218; 13 Mass., 223.
- Chap. 42, explanatory of act to create the county of Humboldt; void, for non submission to vote of people affected; *Duncombe v. Prindle*, 12-13.
- Chap. 50; first gave J. P. jurisdiction of larceny under \$20; *State v. Church*, 8-258.
- Chap. 50; does not divest the district court of jurisdiction of larceny under \$20, already attached; *State v. Church*, 8-258.
- Chap. 50, § 1; assault and battery; imprisonment in county jail not over 30 days, or fine over \$100 still the law (Dec. 1873); *State v. Lee*, 37-403.

- Chap. 52, as to public instruction; void; *Dist. Towns. v. Dubuque*, 7-287.
- Chap. 52, for establishment of high schools in counties; void; *High Sch. v. Clayton Co.*, 9-177.
- Chap. 52, §§ 1, 8, district school directors may bind, by contract, after election and before qualification of successors; *College v. Dist. Towns.*, 13-557.
- Chap. 52, § 32, invalid so far as providing for apportionment of county schools fund equally to districts; *Dist. Towns. v. Co. Judge*, 13-251.
- Chap. 52, public instruction; county judge may levy tax for support of schools; *Louisa Co. v. Davison*, 8-519.
- Chap. 59; practice; judgment may be at first term after suit; if continuance be not asked; *Holt v. Smith*, 9-374; *Breckenridge v. Brown*, 9-399.
- Chap. 65, alien, not resident in U. S., can not take lands by inheritance; *Rheim v. Robbins*, 20-46; *Krogan v. Kinney*, 15-242.
- Chap. 65; aliens may acquire, hold and transmit movable property; *Greenheld v. Morrison*, 21-539.
- Chap. 88, to amend charter of Davenport, void; *Pritz, ex p.*, 9-38.
- Chap. 98; county judge may properly contract for bridge over ravine in public road, at a cost not exceeding \$500, although a constant stream of water does not pass through; *Long v. Boone Co.*, 36-63.
- Chap. 105, authorizes municipalities to sell for tax; *Sweet v. Billings*, 14-386.
- Chap. 111, authorizes assessment of tax for years 1853 and 1857; *Peirce v. Weare*, 41-380.
- Chap. 127, establishes the rule that causes be tried at the second term; *Duncan v. Hobart*, 8-339.
- Chap. 127; trial of causes; does not continue all causes at first term after suit as of course; *Holt v. Smith*, 9-374; *Breckenridge v. Brown*, 9-399.
- Chap. 127, while in force, appeal from J. P. not triable at first term after transcript filed; *Medekin v. Mason*, 10-407.
- Chap. 133, § 6; all summoned as grand jurors not coming; new precept and panel; *State v. Pierce*, 8-233.
- Chap. 134, intended to hold term at Keokuk for trial of criminal cases exclusively; *State v. Nash*, 7-365.
- Chap. 142; revenue; sale for tax not delinquent during two years, invalid; *Orr v. Travacier*, 21-69.
- Chap. 143, prohibitory liquor law; constitutional; *State v. Donehey*, 8-397; *Santo v. State*, 2-203; *Geebrick v. State*, 5-401; *Sanders v. State*, 2-230; *Bryan v. State*, 4-349; *State v. Farris*, 8-563, *Cole's edit.*
- Chap. 143, as to manufacture and sale of beer etc., does not revive charter provisions as to licensing sale of intoxicating liquor, repealed by Code, 1851; *Burlington v. Kellar*, 18-63.
- Chap. 149, deprives township trustees of power to levy road tax in cities; *Hawley v. Hoops*, 12-507.
- Chap. 151; to make tax sales effective; does not apply to municipalities not authorized to sell for tax; *Ham v. Miller*, 20-453.
- Chap. 152, repeals provision of Code, 1851, to foreclose equity of redemption from tax sale; *Byington v. Rider*, 9-568.
- Chap. 152, as to damages on wrongful sale for tax, does not apply to prior sale; *Traer v. Filkins*, 10-564.
- Chap. 152, § 38, providing that the levy of taxes, when made, shall be recorded "in the proper book" is directory only; a sufficient record of a levy properly signed, found in the auditor's office is admissible in support of a tax deed based on a sale for the taxes so levied; *Prouty v. Tallman*, 65-355.
- Chap. 152, property of railroad company taxable only through shares of stock; *Davenport v. M. & M. R. R. Co.*, 12-545.

Chap. 152, § 7, to tax snares of non resident stockholders of railroad company: valid; *Faxton v. M'Cosh*, 12-529.

Chap. 153; occupying claimants; money judgment for improvements, invalid; *Childs v. Shower*, 18-268. (h.)

(A.) *Bank v. Dudley's les.*, 2 Pet., 292; *Hunt v. M'Mahan*, 5 Oh., 10; *M'Coy v. Grundy*, 3 Oh., 463; *Armstrong v. Jackson*, 1 Blackford, 374; *Tyner v. Stoops*, 11 Ind., 22; *Jones v. Carter*, 12 Mass., 314; 2 Pick., 507; *Witington v. Corey*, 2 N. H., 116; *Soc. etc. v. Wheeler*, 2 Gall., 106; *Ross v. Irving*, 14 Ill., 17; *M'Kinlay v. Halliday*, 10 Yerg., 479; 1 Yerg., 590; *Matthews v. Davis*, 6 Humph., 324; *Brown v. Storm*, 4 Verm., 37; 20 Verm., 614; *Saunders v. Wilson*, 17 Tex., 194; 24 Tex., 582; *Fowler v. Halbert*, 4 Bibb., 52; *Fisher v. Cockerill*, 5 Monr., 129; *Gaines v. Buford*, 1 Dana, 484; see *Bright v. Boyd*, 1 Story, C. C., 442; *Jones v. Jones*, 4 Gill, 87; *Lamere v. Winter*, 13 Ala., 31; *Porter v. Hanley*, 5 Eng., 86; *Ford v. Halton*, 5 Cal., 319; *Morrison v. Robinson*, 31 Pa. St., 456; 23 Pa. St., 117; *Hearn v. Camp*, 18 Tex., 545.

Chap. 154, § 26; see Code, 1851, § 2759, ante.

Chap 157, incorporation of towns etc., does not apply to corporations acting under prior special charter; *Decorah v. Bullis*, 25-15.

Chap. 157, incorporation of cities, etc., makes no provision as to levy, collection or sale for taxes by cities etc., under special charters; *Burke v. Jeffries*, 20-146.

Chap. 157, §§ 19-27, incorporation of cities etc., apply to municipal corporations existing when it took effect; *Whiting v. Mount Pleasant*, 11-483, overruled, *Burke v. Jeffries*, 20-149.

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Chap. 87, to appraise property sold under execution, does not apply to prior contracts; *Rosier v. Hale*, 10-484; *Landis v. Abrahams*, 11-284; *Olmstead v. Kellogg*, 47-462. (i.)

(i.) *Bronson v. Kinzie*, 1 How., 311; *M'Cracken v. Hayward*, 2 How., 608; *Grantley's les. v. Ewing*, 3 How., 717.

Chap. 110; to regulate foreclosure of mortgages; valid; *Holloway v. Sherman*, 12-283. (j.)

(j.) 8 Watts & S., 49; 1 Kern., 281; 9 Ala., 731; 2 Douglass, 38; 2 Doug., 197, as precedents.

Chap. 114; redemption; rights under statute not defeated by foreclosure. decree cutting off lien of junior incumbrance; *Watts v. White*, 12-333.

Chap. 114; foreclosure decree before statute in force; junior incumbrancer, not entitled to nine months to answer: *Watts v. White*, 12-333.

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Chap. 21, § 2, as to vote on re-location of county seat at April election, not repealed by Rev. 1860, ch. 31; *Cole v. Superv.*, 11-553; *Mather v. Converse*, 12-352.

Chap. 22, art. 2, confers on supervisors all powers and duties of county judge in managing county affairs; *Yant v. Brooks*, 19-90.

Chap. 31, does not require a vote, on the re-location of county seat, to be at October election; *Cole v. Superv.*, 11-553; *Mather v. Converse*, 12-352.

Chap. 37, the circuit court has exclusive jurisdiction of appeals from special tribunals organized for contesting elections (Stat., 1870, ch. 153); *M'Kinney v. Wood*, 35-168.

Chap. 45, is general, applying to all property of railroad companies and private persons; *Homestead Co. v. Webster Co.*, 21-227; *R. R. Co. v. Webster Co.*, 21-236.

Chap. 45, art. 1, repealed, ch. 152, 1852, except for assessment, equalization, and levy of tax; *Homestead Co. v. Webster Co.*, 21-225; *R. R. Co. v. Webster Co.*, 21-236.

Chap. 51; incorporation of towns etc., does not apply to corporations organized under prior special charter; *Decorah v. Bullis*, 25-15.

Chap. 51; incorporation; city of second class; mayor not member or president of council; *Cochran v. M'Cleary*, 22-80.

- Chap. 51; the reorganization of city government does not repeal a prior lawful ordinance, *Strahl*, ex. p., 16-375.
- Chap. 54; notice not a pre-requisite of filing petition ad quod damnum; *Hoag v. Denton*, 20-119.
- Chap. 54, art. 4, for the erection of mills and dams on water courses and assessment of damages under writ ad quod damnum, not unconstitutional; *Burnham v. Thompson*, 35-424.
- Chap. 55; eminent domain etc.; strictly construed and not extended beyond terms; *Sandford v. Martin*, 31-68.
- Chap. 55, art. 3; general right of way; statute applies to all railroad companies, whether operating by steam or animal power; *Clinton v. Horse R'y Co.*, 37-65.
- Chap. 57; exclusive jurisdiction as to paupers is in supervisors; *Lucas Co. v. Ringgold Co.*, 21-83.
- Chap. 61; proceedings of fence viewers not measured with technical nicety; *Talbot v. Blacklege*, 22-576.
- Chap. 61; fences; action not lie as to partition fence until fence viewers applied to and acted; *Lease v. Vance*, 26-511.
- Chap. 88, art. 5, conferring power to create school districts; valid; *Sch. Dist. v. Dist. Towns.*, 15-435.
- Chap. 97, art. 1; one out of possession has no action under this chapter against the holder of legal title, for improvements; *Claussen v. Rayburn*, 14-138; *Webster v. Stewart*, 6-401; *Banford v. Stein*, 24-595.
- Chap. 103, for redemption of realty from foreclosure of mortgage sale does not affect prior contracts; *Malony v. Fortune*, 14-420 (*k.*)
- (*k.*) *Scoby v. Gibson, Ind.* (Am. L. Reg., Feb., 1862); *Howard v. Bugbee*, 24 How., 461.
- Chap. 113 (Code, 1851, art. 94), a publication criticising rulings of a court, in a cause determined, is not punishable as a contempt; contempt must be toward the court, while engaged in discharge of judicial duty; *State v. Anderson*, 40-208.
- Chap. 115, as to selection of jurors, directory; substantial compliance sufficient; *State v. Carney*, 20-84.
- Chap. 123, application for new trial limited to one year (except in action of right); *Hunt v. Stevens*, 26-401.
- Chap. 126, conferring power to order debtor to deliver property and punish disobedience as contempt; void; *Grace*, ex p., 12-216. (*l.*)
- (*l.*) *B'k of Rochester v. Bank*, 6 Oh. St., 254; *Spear v. Woodwell*, 1 Cow., 144; *Steward v. Biddlecum*, 2 Cow., 103.
- Chap. 126; does not provide for debtor's imprisonment, unless for fraud etc.; *Grace*, ex p., 12-213.
- Chap. 126, the purpose of proceeding under this statute is to obtain an order for payment of debt; not alone to settle right of creditor as to the application of fund; *Grace*, ex p., 12-214.
- Chap. 127, supplemental proceedings; applies to equities of debtor in real estate; but as to it is merely cumulative; *Bridgman v. M'Kissick*, 15-265.
- Chap. 137, attorney's fee is never taxed to losing party; *Blake v. Blake*, 13-42.
- Chap. 141, application to vacate judgment, must be within one year from its rendition, if the court had full jurisdiction to render it; *Hunt v. Stevens*, 26-401.
- Chap. 144; action of right lies for the recovery of dower; *Rice v. Nelson*, 27-155; *Huston v. Seeley*, 27-198.
- Chap. 148; so much thereof as undertakes to give remedy in rem, against boat or vessel, for cause within admiralty cognizance, invalid; *Walters v. Steamboat*, 24-196.
- Chap. 155, injunction may issue at law to restrain continuance of same wrong by same parties; *Hall v. Crouse*, 14-489.
- Chap. 167, § 11; action lies to wife for libel, without joining husband; *Pancoast v. Burnell*, 32-396.

- Chap. 184, offense of assisting a prisoner to escape is complete without reference to the prisoner's guilt; *State v. Bates*, 23-98.
- Chap. 184, assisting one to escape, from custody, who threatens to do a criminal act, is as criminal as if prisoner had committed the offense; *State v. Bates*, 23-98.
- Chap 191; fugitive from justice; to be surrendered only on crime evidenced by indictment, information or charge before a competent officer; *State v. Hufford*, 28-395. (m.)
- (m.) *Smith*, ex p., 3 M'Lear, 121; *Clark*, ex p., 9 Wend., 212; *Hayward*, in re, 1 Sandf., 701.
- Chap. 312, cl. 14; supervisors restricted, as to prescribing fees, to such as are paid from county treasury; *Ripley v. Gifford*, 11-370.
- Sec. 24, only prescribes a general rule, to govern when the time is not fixed by legislature, in the statute, for it to have force; *Hunt v. Murray*, 17-314.
- Sec. 29, change of term day of court does not invalidate notice served; *Ins. Co. v. Dickerson*, 28-275.
- Sec. 29; indictment under a statute is not affected by repeal of the statute; *State v. Shaffer*, 21-486.
- Sec. 51; ordinance that a city council shall determine contested election; not inconsistent; *Strahl*, ex p., 16-375.
- Sec. 136, requires security for costs from non residents, in district court, only; *Smith v. Humphrey*, 15-429.
- Sec. 213; as to protest; notice must be deposited in post office on day of demand of payment; *Fahnestock v. Smith*, 14-563.
- Sec. 247; tax warrant signed by clerk acting as county judge, not invalid, record not showing absence, etc., of county judge; *Corbin v. Hill*, 21-73.
- Sec. 250, 287; supervisors may submit whether sheep or swine, either or both, may run at large; *Cowl v. Ritchey*, 23-584.
- Sec. 250, 287; supervisors may submit whether sheep or swine may run at large in divided form; *Cowl v. Ritchey*, 23-584.
- Sec. 250, 312; supervisors can not submit a proposition to borrow money to build bridge at special election; *Yant v. Brooks*, 19-91.
- Sec. 267; judgment for costs, in county court, on demurrer sustained and cause dismissed; appealable; *Wilson v. Shorick*, 21-299.
- Sec. 267; appeal lies from supervisor's refusal to appoint appraisers of land for road purposes, on the ground the application was too late; *Warner v. Doran*, 30-522.
- Sec. 267; grant or refusal of ferry license not appealable; *Lippencott v. Allander*, 23-537.
- Sec. 267; appeal lies from the revocation of ferry license, by supervisors; *Lippencott v. Allander*, 25-446.
- Sec. 267; appeal lies from refusal of county court to correct record, to show oath on filing claim; *Goodrich v. Conrad*, 28-300.
- Sec. 267, appeal from county court must be taken to next district court, if ten days intervene; *Whitehead v. Thorp*, 22-427.
- Sec. 267, does not require bond on appeal from county court to be filed ten days before next district court; *Whitehead v. Thorp*, 22-427.
- Sec. 203; bond of supervisor, with surety, for the proper expenditure of fund appropriated to special use upon receipt of money in advance of process of work in violation of statute; not void; *Muscatine v. Carpenter*, 33-43.
- Sec. 312, subd. 23, amended 1866, ch. 87; supervisors may order building erected, costing not over \$5000, and purchase land therefor, not over \$2000; *Merchant v. Tama*, 32-201.
- Sec. 328, does not dispense with requirement (§ 828) of a commissioner to determine whether pre-requisites to establish road have been complied with; *State v. Kimball*, 28-535.
- Sec. 328, does not intend that supervisors shall delegate their functions at the final establishment of a road; *State v. Kimball*, 28-535.

Sect. 328; supervisors may delegate to clerk to fix the day on which highway commissioner shall act or when application to establish shall be heard; perhaps, to appoint appraisers, notify of appointment and meeting and to fill vacancies; *State v. Kimball*, 23-535.

Sect. 328; supervisors may not delegate to clerk the appointment of commissioners to view etc., on the establishing of a road; *State v. Kimball*, 23-534; *Bennett v. Fisher*, 26-497.

Sect. 422; abortion procured by married woman on herself; not foeticide; *Hatfield v. Gano*, 15-178.

Sect. 427; arson; actual burning of building not necessary to bring act within the statute; *State v. Johnson*, 19-232. (n.)

(n.) *Cone v. Van Schaack*, 16 Mass., 105; *Reg. v. Russell*, 1 Cr. & M., 541.

Sect. 430 et seq.; salaries of clerks of district and circuit courts limited to \$2000 per annum, except allowances for services in probate; duty of clerks to collect all statutory fees and report, paying to supervisors the excess over \$2000; *Boone Co. v. Wilson*, 38-373.

Sect. 710; intended to invest counties with all necessary authority to raise the revenue, including sufficient to pay debts; the limitations of the section operate as limitations of charter on taxation; *Land Co. v. Sac Co.*, 39-136.

Sect. 710-818; revenue; do not relinquish interest accrued and accruing on taxes levied under prior laws; *State v. Stewart*, 11-256.

Sect. 710-818, provide for collecting interest accrued and accruing on taxes levied under prior laws; *State v. Stewart*, 11-257.

Sect. 711, being enacted prior to the passage of U. S. homestead statute, 1862, May (20) does not apply to entries made thereunder; *Moriarty v. Boone Co.*, 39-639.

Sect. 711; see Code, 1873, §769, post.

Sect. 719, personalty not taxable unless owned by person assessed on January 1st of the current year; *Tackaberry v. Keokuk*, 32-156.

Sect. 720; not necessary to validity of tax assessment of realty that assessor personally examine the land; *Beeson v. Johns*, 59-167.

Sect. 723; one buying and selling pork is a "merchant" for taxation; *McConnor v. Roberts*, 25-154.

Sect. 734; on prosecution for refusal to take oath; sufficient to show request and refusal; *Washington Co. v. Miller*, 14-585.

Sect. 737; land assessed to owner and, also, to "owner unknown" for same tax; latter assessment void; sale void; *Nichols v. M'Glathery*, 43-190.

Sect. 739 (stat. 1862, ch. 173, § 4); object of the section is that like property shall be put in the same class for taxation; then equalized in all parts of county, valued at same rate; *Cassett v. Sherwood*, 42-626.

Sect. 739, repealed by implication, by Stat., 1870, ch. 89; supervisors have no authority to increase assessment of property and tax levied on such increased valuation illegal; *Rood v. Supervisors*, 39-445.

Sect. 739-40; supervisors are without authority to abate tax levied by district township; *Dist. Towns. v. Moore*, 39-606.

Sect. 747; clerk of supervisors can not increase assessment of tax not shown to be the result of mistake or error or disproportionate; *Jones v. Tiffin*, 24-191.

Sect. 747; supervisor's clerk may amend assessment of tax, to insert name of joint owner intended to be inserted by assessor; *Conway v. Younkin*, 28-297; see Code 1873, §§ 837, 841, post.

Sect. 755, 762; tax sale and deed not invalid for mere error of assessment; *Eldridge v. Kuehl*, 27-172; *Sully v. Kuehl*, 30-276.

Sect. 762; curative of error or irregularity in tax as affecting sale; retroactive; *Sully v. Kuehl*, 30-278.

Sect. 762, void, illegal or erroneous tax paid under protest; payer may recover; *Lau-*

- man v. Des Moines Co., **29-313**; Parker v. Sexton, **29-425**; Tallant v. Burlington, **39-548**; Isbell v. Crawford Co., **40-102**; Richards v. Wapello Co., **48-509**.
- Sect. 762; tax voluntarily paid; refunded only when erroneous or illegal in assessment or levy; Dub. etc. R. R. Co. v. Webster Co., **40-17**.
- Sect. 762, see Code, 1873, § 870, post.
- Sect. 764; 1860, ch. 24, § 4, extra sess., and 1864, ch. 115, § 2; treasurer authorized to collect, of delinquent tax payer, 20 cents on each tract advertised; M'Clintock v. Sutherland, **35-489**.
- Sect. 766; sale of tract of land, part of which homestead of tax payer delinquent, void in toto; Stewart v. Corbin, **25-148**.
- Sect. 771, 784, making tax deed conclusive of compliance as to warrant, certificate and affidavit of due publication, valid; Hurley v. Powell, **31-66**.
- Sect. 775, see Code, 1873, § 885, post.
- Sect. 776; co-treasurer is authorized to advertise and sell for tax, for cause, other than on day fixed by statute; Eldridge v. Kuehl, **27-170**; Sully v. Kuehl, **30-277**.
- Sect. 777; fees paid to the county treasurer, on redemption from tax sale, belong to county; Delaware Co. v. Griffin, **17-167**.
- Sect. 779; real estate sold for taxes must be redeemed within 3 years from date of sale; i. e. bid accepted; time of redemption not extended in favor of a minor who acquires title within the 3 years; Stevens v. Cassady, **59-114**.
- Sect. 779, a married woman is allowed to redeem her land, from tax sale, within one year from coverture ceased; Myers v. Copeland, **20-24**.
- Sect. 779; action by minors to redeem from tax sale; costs avoided only by showing tender of the sum paid for taxes made and kept good; Curls v. Watson, **25-38**.
- Sect. 784, see § 771, ante.
- Sect. 784, applies only where the party, claiming adversely to the tax purchaser, seeks to defeat the deed by an attack on the deed or sale, which would have effect to render the tax deed invalid; Bullis v. Noble, **36-622**.
- Sect. 784, does not apply to the case of one resisting a tax deed on the ground that the land deeded was not assessed. Section unconstitutional so far as it makes deed conclusive of fact of assessment; Immegart v. Gorgas, **41-441**.
- Sect. 784; tax; invalid so far as making tax deed conclusive evidence of regularity of prior proceedings; M'Cready v. Sexton, **29-400**.
- Sect. 784; unconstitutional, in so far as it makes tax deed conclusive evidence of matters jurisdictional and essential to the exercise of the taxing power; deed is, however, conclusive evidence as to the manner of the exercise of these jurisdictional powers, such as the sufficiency of the proceedings at sale; Martin v. Cole, **38-148**.
- Sect. 784; combination of purchaser at tax sale with other purchasers will not affect title of a subsequent purchaser, for value, without notice of the fraud; Van Shaack v. Robbins, **36-203**.
- Sect. 784; tax deed vests in the purchaser all interest of the holder of the patent title; statute of limitations a good defense to him against contract to convey such title; Byington v. Stone, **51-320**.
- Sect. 784, restriction imposed on one defending against a tax title, by body of section not applicable to defense of fraud pointed out in proviso. To defeat title by fraud on part of officer conducting sale not necessary to show payment or tender of taxes; Corbin v. Beebee, **36-341**.
- Sect. 785; county not liable to purchaser at tax sale, by mistake or wrongful, for penalty and interest after statute, 1862, ch. 173, in effect; Coulter v. Mahaska Co., **17-93**.
- Sect. 790, word "sale" in respect of limitation of recovery under tax sale, means completed sale," vesting title in purchaser; Eldridge v. Kuehl, **27-177**; Henderson v. Oliver, **28-20**; Griffith's exec. v. Carter, **64-196**.
- Sect. 790, tax; admissible to show land was not sold for taxes, non obstante recital

- in tax deed; *Case v. Albee*, 28-279; *Thomas v. Stickie*, 32-78; *Early v. Whittingham*, 42-167.
- Sect. 790; action on a tax title, to recover possession of land from patent title holder, barred after five years from the date when the tax deed could have been procured; *Thode v. Spofford*, 65-297.
- Sect. 790; all actions for the recovery of land based on irregularity of tax sale barred in 5 years; ex. gr., sale of distinct tracts in gross; *Thomas v. Stickie*, 32-77; *Douglas v. Tullock*, 34-262; *Monk v. Corbin*, 56-506. (o.)
- (s.) *Pillow v. Roberts*, 13 How., 472; *Brooks v. Bruyn*, 35 Ill., 392.
- Sect. 811; not repealed by Rev., 1860, ch. 45; *State v. Shaw*, 23-317.
- Sect. 811; state's interest in land mortgaged to school fund, not affected by tax sale; *State v. Shaw*, 28-77.
- Sect. 824; "township," for posting notices of application for road, means townships created by law; *M'Collister v. Shuey*, 24-367.
- Sect. 828, see § 328, ante.
- Sect. 832; commissioner to examine as to the propriety of a highway, reporting adversely; board of supervisors left without jurisdiction; *Morgan v. Miller*, 59-482.
- Sect. 836-7; provisions as to mile posts and making field notes and plat, directory; non compliance not vitiate proceeding for road; *M'Collister v. Shuey*, 24-367.
- Sect. 839-90; delivery of map of roads to road supervisors confers no additional authority on him; *Mosier v. Vincent*, 34-480; *Campbell v. Kennedy*, 34-496.
- Sect. 902; liability of district supervisor for injury; personal, for careless performance or neglect after notice; *Wilson v. Jefferson Co.*, 13-183.
- Sect. 904, man not able bodied not liable to penalty for default, on summons of road supervisor, to labor on road; *Martin v. Gadd*, 31-77.
- Sect. 905; fence projecting on to highway, not obstructing travel; not removed by supervisor, save on notice, not exceeding six months, to land owner; *Blackburn v. Powers*, 40-683.
- Sect. 913; failure to file field notes and survey of land established; supervisors may have re-survey; *Balke v. Bailey*, 20-125.
- Sect. 936, construction of levee, through private property, enjoined until compensation paid; *Horton v. Hoyt*, 11-497.
- Sect. 959; sale of swamp land at less than \$1.25 per acre; void and the illegality appearing on the face of the deed, grantee can not claim as an innocent purchaser; *Savery v. Moore*, 61-507.
- Sect. 973-4; right of pre-emption only to actual settler who makes permanent improvements; *Bixby v. Adams Co.*, 49-509.
- Sect. 986 (Stat., 1853, Mar. 28); contract for sale of swamp lands by county, thereby devoted to the purposes mentioned in section, not limited to price of \$1.25 per acre and not invalid, sale being for less; *Audubon Co. v. Am. Emig. Co.*, 40-460; *Page Co. v. Am. Emig. Co.*, 41-125.
- Sect. 986, amended 1862, ch. 77; county, under its implied power, can make a valid contract with agent to compensate him for services in recovering swamp land by conveying a part of land recovered; *Grimes v. Hamilton Co.*, 37-295.
- Sect. 986 et seq.; supervisors are empowered to call a special election as to the ratification of a contract donating swamp land in aid of railroad; *R. R. Co. v. Boone Co.*, 34-48.
- Sect. 987; requirement that contracts for the disposition of swamp lands must be ratified by vote of people, applies only to uses specified in § 936, and not to any other lawful use of such lands, and such other contracts are not required to be written; *Grimes v. Hamilton Co.*, 37-297.
- Sect. 1027; sale of lot in city, town etc., not invalid if plat not recorded; *Watrous v. Blair*, 32-62.
- Sect. 1027; imposing a penalty on sale of lot in town etc. until plat recorded; not prohibit sale of such lot; *Watrous v. Blair*, 32-62.

Sec. 1027; providing a penalty for selling any lot in a town or addition thereto before plat thereof is recorded, does not make note given for purchase price of the lot void; *Pangborn v. Westlake*, 36-549. (p.)

(p.) *Strong v. Darling*, 9 Oh., 201; *Bemis v. Becker*, 1 Kas., 249; *Downing v. Kinger*, 7 Mo., 585; *Mason v. Pitt*, 21 Mo., 391.

Sect. 1048 et seq.; territory should not be detached from a city, as receiving no benefit from city improvements, when the city's growth will require re-annexation; *Mosier v. Des Moines*, 31-175.

Sect. 1067, vesting discretion in the district court to grant or refuse new assessment of land for highway by a jury of twelve, not unconstitutional; *Des Moines v. Layman*, 21-156.

Sect. 1068; but one suit against all owners of lots assessed for construction of sidewalks; *Des Moines v. Stephenson*, 19-508.

Sect. 1063; suit against owners of lots assessed for sidewalks; court may compel severance as to each defendant; *Des Moines v. Stephenson*, 19-508.

Sect. 1068-9; one who, contracting with a city, builds a sidewalk in front of a lot, after neglect of the lot owner, has action in his own name for the price, non obstante Stat., 1872, ch. 45; *Risdon v. Shank*, 37-82.

Sect. 1068-9, govern proceedings against owners of lots assessed for sidewalks; *Des Moines v. Stephenson*, 19-509.

Sect. 1074; J. P. has no jurisdiction of violation of city ordinance under this section; *Goodrich v. Brown*, 30-293.

Sect. 1093, trustees elected under this section are the only councillors of a city and elect their president; *Cochran v. M'Cleary*, 22-81.

Sect. 1097, does not oust supervisors of the right to erect free bridges over rivers with-in incorporated towns or cities; *Bell v. Foutch*, 27-129; *Barrett v. Brooks*, 21-150.

Sect. 1122; on amendment by municipal corporation of a section of an ordinance, requires the section only, not the whole ordinance, to be set out; *Decorah v. Dunstan*, 38-98.

Sect. 1134; does not take from municipal corporation power to contract by parol, by authorized agent; *Duncombe v. Fort Dodge*, 38-283.

Sect. 1134; defining how an order of contract by a city council shall be made and evidenced, does not limit the power of such city to contract by parol, through an agent; *Indianola v. Jones*, 29-283; *Duncombe v. Fort Dodge*, 38-283.

Sect. 1141; as to the amendment of city charters, valid; it is not a local or special law; *Hart v. Livingston*, 29-220.

Sect. 1144; object to give uniform effect to deeds on sale for municipal taxes and a method to foreclose redemption; *Street v. Hughes*, 20-136.

Sect. 1144; to make tax sales effective; does not apply to municipalities not authorized to sell for tax; *Ham v. Miller*, 20-453.

Sect. 1144, does not define who shall make deed on sale for municipal tax; *Street v. Hughes*, 20-132.

Sect. 1144, leaves the matter of the execution of deed, on sale for municipal tax, to charters; *Street v. Hughes*, 20-132.

Sect. 1152, 1156, see Stat., 1870, ch. 172, post.

Sect. 1161-2, non compliance with these sections does not make stockholders liable for corporate debts under § 1166; *M'Kellar v. Stout*, 14-360 (q.); followed under Code, 1873, §§ 1076-7, *Langan v. Constr. Co.*, 49-323.

(g.) *Mill-dam Foundry*, 21, 457; *Curtis v. Harlow*, 12 Met., 3, dist'd.

Sect. 1163; action for damages, against corporate officer or stockholder, not complying with articles of incorporation, must allege intent to defraud and the particular breach; if claim is of intent to deceive public etc., as to liabilities, the particular act done

- must be stated; in either event damage to plaintiff must be shown; *White v. Hosford*, **37-588**.
- Sect. 1163; stockholders are not liable, for corporate debts, for non compliance with §§ 1161-2; *M'Kellar v. Stout*, **14-363**, followed under Code, 1873, §§ 1076-7; *Langan v. Constr. Co.*, **49-323**.
- Sect. 1211, creditor merging judgment into a title without notice of equities, is a purchaser within the section, protected as a subsequent bona fide purchaser; *Halloway v. Platner*, **20-123**.
- Sect. 1273, land can not be appropriated for ferry landing under this section; *Sandford v. Martin*, **31-68**.
- Sect. 1314; granting railroad right of way; the statute makes payment a condition precedent of entry; *Henry v. Dub. etc. R. R. Co.*, **10-543**.
- Sect. 1317; remedy for assessment of damages for land taken for railroad right of way; exclusive; *Daniels v. R. R. Co.*, **35-134**.
- Sect. 1317, does not preclude an action of ejectment, by land owner whose land is taken by a railroad company without tender of compensation; *Daniels v. R. R. Co.*, **35-134**.
- Sect. 1321; in the sense of this statute the words "over" and "upon" are synonymous with and include the idea of crossing highways on the surface thereof and, also, running upon them lengthwise; *Milburn v. City of Cedar Rapids*, **12-246**; *Gear v. C., C. & D. R. R. Co.*, **43-84**.
- Sect. 1321; railroad company has a right, subject to proper control and police regulations, to pass over streets in a city without consent of city authorities; *C., N. & S. W. R. Co. v. Mayor etc.*, **36-299**; *Clinton v. Horse Ry. Co.*, **37-66**.
- Sect. 1321; railroad company has a right, subject to equitable and police regulations, to pass over city street without previous payment of damages for occupation; *Chi., N. & S. W. R. Co. v. Mayor etc.*, **36-302**; *Council Bluffs v. Kas. C. etc. Co.*, **45-355**.
- Sect. 1327, as to right of way etc., does not extend the liability of a railroad company, for injuries, to acts of those not its agents; *Callahan v. R. R. Co.*, **23-566**.
- Sect. 1329; railroad company liable for injuries to stock on neglect to construct proper fences and gates at farm crossings; *M'Kinley v. C., R. I. & P. R. R. Co.*, **47-77**.
- Sect. 1329; railroad company only required to provide farm crossing on land of owner, through which it runs, when his interest and convenience require it; *Henderson v. R. R. Co.*, **48-220**. (r.)
- (r.) *Spinner v. R. R. Co.*, 67 N. Y., 153.
- Sect. 1329; what is an adequate crossing, over a railroad track, under this section is a question of fact, depending on circumstances; ex. gr., nature and position of soil, track, etc.; *Gray v. R. R. Co.*, **37-123**.
- Sect. 1333, company organized to furnish materials for building and equipping railways is a railway corporation, within the statute exempting stockholders for liability beyond the amount of their stock; *Nat. Bk. v. Davies*, **43-433**; *Langan v. Constr. Co.*, **49-324**.
- Sect. 1353; telegraph company may adopt reasonable conditions as to transmission of messages, restricting liability, where messages are not repeated; *Sweatland v. Tel. Co.*, **27-447**; *Manville v. Tel. Co.*, **37-218**. (s.)
- (s.) *N. Y. etc. Tel. Co. v. Dryberg*, 35 Pa. St., 298; *Parks v. Tel. Co.*, 13 Cal., 422
- Sect. 1387-8; township trustees may bind the county for medical services to the sick poor, during the vacation of supervisor's board; *Cooledge v. Mahaska Co.*, **24-213**.
- Sect. 1411, to punish keeping a house of ill fame includes a house on a flat boat, on Mississippi river, used as a habitation, for such purposes; *State v. Mullin*, **35-207**.
- Sect. 1427, power to revoke the guardianship of a lunatic does not take away the right to appeal from an order appointing; *Wilson v. Shorick*, **21-334**.
- Sect. 1488; a county has no lien, without judgment, on the realty of an insane person, for expense incurred on account of such person in the hospital; *Thode v. Spofford*, **55-302**.

- Sect. 1520, properly, notice in writing should issue from fence viewers; Talbot v. Blackege, 22-576.
- Sect. 1530, neglect of one owner to construct fence assigned as a partition fence; notice not needed of meeting of viewers to assess value, when the fence is built by the order; Talbot v. Blackege, 22-578. (t.)
- (t.) Edgerton v. Moore, 28 Conn., 600; Fox v. Beebe, 24 Conn., 271, followed over Scott v. Dickenson, 14 Pick., 576, Harris v. Stardevant, 29 Me., 366.
- Sect. 1544; steep bluff, hedge, ditch, etc., effectual to inclose, may be a lawful fence; Hilliard v. R'y Co., 37-445.
- Sect. 1545, fence of less height than 4 ft. 5 in., may be a lawful fence, if of equal strength; Philips v. Oystee, 32-250.
- Sect. 1545, local regulation as to swine at large; does not apply to fence along a railway; Fernow v. R. R. Co., 22-530.
- Sect. 1548; action for damages, cattle damage feasant; proof by ordinary character of evidence; Quinton v. Van Tuyl, 30-555.
- Sect. 1551; fence viewers appraise and certify damage by trespassing cattle only when plaintiff elects to distrain; Quinton v. Van Tuyl, 30-556.
- Sect. 1561; indictment may charge making, selling or keeping to sell intoxicating liquors and will not be double if it charges the offence by two, or all, means stated in section; State v. Baughman, 20-408.
- Sect. 1561-3, see § 1564, post.
- Sect. 1562; indictment, under this section, concluding contra formam, sufficient; State v. Allen, 32-249.
- Sect. 1562, information, for selling intoxicating liquor, contra formam, must state to whom sold if known; State v. Allen, 32-492; State v. Jordan, 39-388.
- Sect. 1562; ten days imprisonment (unless fine, and costs), on sale of liquor, prevails over general stat. (§ 4881), fixing commutation of fine; State v. Shaw, 23-317.
- Sect. 1562, see § 1564, post.
- Sect. 1563; indictment lies against the agent or employé of a social club, to keep and deal out its intoxicating liquors to purchasers of tickets; State v. Mercer, 32-403; Cantril v. Sauer, 59-27.
- Sect. 1564, indictment against a person, for selling intoxicating liquor need not specially describe the building; State v. Becker, 20-439; State v. Becker, 22-597.
- Sect. 1564; indictment lies against a bartender or clerk, in saloon, where intoxicating liquors are sold in violation of law, for nuisance; State v. Stucker, 33-306.
- Sect. 1564; indictment charging nuisance, by using and keeping room, etc., for selling and by selling intoxicating liquor, in violation of § 1562 etc., sufficient; State v. Freeman, 27-336.
- Sect. 1564; indictment for nuisance, by selling or keeping for sale intoxicating liquors; not enough to aver keeping a place to sell; must aver sale or keeping for sale; State v. Hass, 22-193; State v. Harris, 27-430; State v. Britton, 27-431.
- Sect. 1564; occasional sales of intoxicating liquor, in a secret manner, convicts of nuisance; notoriety of place not essential; State v. Freeman, 27-337.
- Sect. 1564, nuisance complete by doing either or all acts prohibited by §§ 1561-3, prohibitory liquor law; State v. Layton, 25-195. (u.)
- (u.) People v. Townsend, 3 Hill, 479.
- Sect. 1565-7; destruction of intoxicating liquors seized, under warrant, justified only on finding that they were kept with intent to be sold and sold in violation of law; State v. Harris, 36-137.
- Sect. 1568, 1586; imperative; thirty days imprisonment is part of the penalty for intoxication; State v. Patton, 19-458.
- Sect. 1571; intoxicating liquor is property, though its sale, as a beverage, be unlawful; Monty v. Arneson, 25-388.
- Sect. 1571; loss of liquors by common carrier; no recovery save upon allegation and proof of loss and ownership with lawful intent; Sommer v. Cate, 22-586.
- Sect. 1571; action, under this section, to recover price paid for intoxicating liquors,

- sold in violation of law; civil action, admitting of motion to set aside verdict, as against evidence; Woodward v. Squires, **39-438**.
- Sect. 1571; contract to sell intoxicating liquor, by dealer in sister state, with intent to enable vendee to violate prohibitory law; void; Tegler v. Shipman, **33-198**.
- Sect. 1571; agent of dealer in another state, taking order for intoxicating liquor subject to approval or disapproval of principal; contract of sister state not within prohibitory section; Tegler v. Shipman, **33-198**; Adae v. Zangs, **41-541**; Taylor v. Pickett, **52-469**.
- Sect. 1571; agent of dealer in sister state, contracting, under power, to sell intoxicating liquor; contract void; Tegler v. Shipman, **33-198**; Taylor v. Pickett, **52-469**.
- Sect. 1575, amended by Stat., 1868, ch. 128, to grant permits to sell intoxicating liquors; not unconstitutional; Ruth, in re, **32-251**.
- Sect. 1575-6; action on bond, given on licensing to sell liquors, for breach; necessary only to assign breach in words of undertaking, without alleging the particulars of failure to perform; Jones Co. v. Sales, **25-27**.
- Sect. 1578, peace officer can not refuse to answer, as to his knowledge of violation of law, as tending to criminate him; Hunt v. M'Calla, **20-21**.
- Sect. 1586; see §§ 1568, 1586, ante.
- Sect. 1583; indictment, for keeping and selling intoxicating liquors, need not negative manufacture from products of the state; State v. Stapp, **29-552**; State v. Curley, **33-360**.
- Sect. 1583; it is no violation of prohibitory liquor law to sell beer; State v. Brindle, **26-513**.
- Sect. 1598, authorizing taxation of capital of banks; repeal by stat., 1868, valid; Morseman v. Younkin, **27-357**.
- Sect. 1791; defendant is a competent witness as to usury, though the suit be by an executor or administrator; the section is not affected by § 3982; Rinehart v. Buckingham, **34-410**.
- Sect. 1791; judgment in favor of school fund for usurious interest runs against surety, as well as principal; M'Intosh v. Likens, **25-559**.
- Sect. 1792; usury; indorsee taking note with knowledge of usury; not bona fide assignee; Brown v. Wilcox, **15-416**.
- Sect. 1798; stipulation in policy of insurance that it shall be void on assignment without consent of insurer; not prevent recovery by assignee; Mershon v. Ins. Co., **34-90**.
- Sect. 1803, does not limit the right of action, in holder of negotiable paper, against any or all, indorsers or assignors; Huse v. Hamblin, **29-506**.
- Sect. 1812; damages on non payment of bills of exchange; does not apply to inland, but, only to foreign bills; Nat. Bk. v. Owen, **23-195**.
- Sect. 1816, to avail of plea of tender, tender must be kept good, by money in court; whether made in writing, under the section, or by offer of money; Shugart v. Pattee, **37-424**.
- Sect. 1816; tender of a particular sum of money not produced must be in writing; Casady v. Bosler, **11-244**.
- Sect. 1818; tender; "objection to the money," refers to the character, not amount of the money; absence of objection to amount does not preclude denial of sufficiency on trial; Chi. etc. R. R. Co. v. Packet Co., **38-379**.
- Sect. 1819, notice of surety, to creditor, to bring suit on obligation must demand suit against all parties or failure to sue will not discharge surety; Harriman v. Egbert, **36-271**.
- Sect. 1819; discharge of surety, after notice to creditor to sue, is not contingent on apprehension of the principal's insolvency; Nat. Bk. v. Smith, **25-213**.
- Sect. 1819-20; surety notifying creditor to sue, or permit him to sue in creditor's name, discharged if neither be done in 10 days; Nat. Bk. v. Smith, **25-213**; see Germ. Am. Bk. v. Denmire, **58-138**.

- Sect. 1810-22, surety on note, to discharge himself, under this section, must fully comply with it; *Hill v. Sherman*, 15-367.
- Sect. 1810-22; on notice from surety, payee or the holder of note may sue or allow surety to do so; *Hill v. Sherman*, 15-367; *Thornburg v. Madren*, 33-383.
- Sect. 1810-22, a mere note demanding suit, against the principal, will not discharge surety; *Hill v. Sherman*, 15-368.
- Sect. 1820, discharge of surety, by failure to sue etc. on request, not affected by surety's official relation to creditor; ex. gr., director of bank; *Nat. Bk. v. Smith*, 25-214.
- Sect. 1826, does not affect the right of insolvent debtor to sell or mortgage all his property, to pay a particular debt; *Lampson v. Arnold*, 19-486; *Lyon v. McIlvaine*, 24-13; *Davis v. Gibbon*, 24-263; *Farwell v. Howard*, 26-384.
- Sect. 1826, does not invalidate a general transfer; but, only a general assignment; *Lampson v. Arnold*, 19-489.
- Sect. 1826, contains nothing to prohibit a debtor's making a partial assignment, as at common law; *Lampson v. Arnold*, 19-486.
- Sect. 1832, does not afford a plain etc. remedy to compel creditor to exhaust special security before taking a dividend under a general assignment; remedy in equity; *Wurtz v. Hart*, 13-518.
- Sect. 1845; mechanic's lien; subsequent promise of purchaser of property, in consideration of forbearance to sue, to pay for labor and material; not collateral security to deprive of lien; *Mervin v. Sherman*, 9-331.
- Sect. 1845; mechanic's lien; acceptance of notes, for work or material, will not divest right to mechanic's lien, except by express agreement; *Logan v. Attix*, 7-77; *Bonsall v. Taylor*, 5-546; *Scott v. Ward*, 4 Gr., 112; *Gilcrest v. Gottschalk*, 39-312.
- Sect. 1846, 1853, 1855; "improvements" comprehends the entire erection; is not limited to the constituent parts. The mechanic's lien attaches when a building is commenced and has priority over a mortgage executed thereafter, although the particular piece of work for which the lien attaches was not begun; *Neilson v. R'y Co.*, 44-73. (v.)
- (v.) *Davis v. Bisland*, 18 Wall., 659; *Dubois v. Wilson*, 21 Mo., 214; *Amer. F. Ins. Co. v. Pringle*, 2 S. & R., 138; *Wells v. Canton Co.*, 3 Mo., 234.
- Sect. 1846, 1860, for enforcement of mechanic's lien; one in possession of realty, under contract of purchase, deemed owner or proprietor; *Stockwell v. Carpenter*, 27-125.
- Sect. 1847; laborer of sub-contractor, to construct a railroad, can not enforce mechanic's lien, against the contractor, if the latter has paid to the sub-contractor all his due, notwithstanding the company is indebted, on the contract, to contractor; *Utter v. Crane*, 37-632.
- Sect. 1851, amended 1862, ch. 3; during ninety days, a mechanic's lien is good against intervening incumbrancers, without statement of claim filed; after ninety days the claim must be filed, to preserve priority; *Evans v. Tripp*, 35-372.
- Sect. 1853-4; lien of mechanic etc., has priority, as to building, but not as the land, over vendor's lien; *Stockwell v. Carpenter*, 27-124.
- Sect. 1853, 1855; see § 1846, ante.
- Sect. 1855, word "improvement," as used in this section, is not applied to an addition or betterment of building; only to an independent structure on land; *Geichell v. Allen*, 34-562.
- Sect. 1858-9; where the owner indebted dies, before suit to foreclose mechanic's lien brought, the heirs are not necessary parties; foreclosure against the administrator binds heirs and devisees; *Welch v. McGrath*, 59-526.
- Sect. 1860, service of notice waived by indorsement (signature and date); the subject matter being within the jurisdiction the waiver acknowledges service; *Johnson v. Monell*, 13-302.

Sect. 1804; special execution, to enforce mechanic's lien, must conform to judgment; *Wilson v. Reuter*, 29-178.

Sect. 1914-75, deed of lot, on which a building stands, conveys right to such part of party wall as is on adjacent land; *Thomson v. Curtis*, 28-231.

Sect. 1866; see § 1846, 1860, ante.

Sect. 1941, protects subsequent purchasers and none others; *Rankin v. Miller*, 43-19.

Sect. 1941, does not intend protection against an independent title, distinct for that on which a recorded deed is based; *Rankin v. Miller*, 43-19. (w.)

(w.) *Long v. Dollarhide*, 24 Cal., 218; *Roe v. Neal, Dudley*, 168; *Finno v. Sayre*, 3 Ala., 458; *Whittington v. Wright*, 9 Ga., 23; *Felton v. Hunter*, 24 Me., 29; *Crockett v. Maguire*, 10 Mo., 34; *Ely v. Wilcox*, 20 Wis., 530; *Rogers v. Burchard*, 34 Tex., 441; *Losey v. Simpson*, 11 N. J. Eq., 246; *Bates v. Norcross*, 14 Pick., 224; *Quirk v. Thomas*, 6 Mich., 76; *Ballou v. Murray*, 1 Johns. Ch., 566.

Sect. 1975; see § 1914, ante.

Sect. 1975, 1979; university lands; not in conflict with right to rescind contract, for vendee's default; *Henn v. University*, 22-191.

Sect. 2037; powers, conferred on district board of directors, exercised without concurrence of annual district meeting; additional school tax necessary; *Snyder v. Wampton*, 12-411.

Sect. 2054, district school directors can not lawfully dismiss a pupil for acts, done out of school, inciting ridicule of directors and insubordination but not immoral or prohibited by rule; *Murphy v. Board etc.*, 30-432.

Sect. 2061; see §§ 2876, 2918, 2061, post.

Sect. 2095; action lies against school district to collect an order properly drawn; *Cross v. Towns.*, 14-29.

Sect. 2197; new matter in answer, not as cross action, deemed controverted by denial or avoidance, without replication; *Loan Assoc. v. Ins. Co.*, 16-77; *Smith v. Milburn*, 17-34; *Ayers v. Ins. Co.*, 21-189.

Sect. 2207; interest of mortgages is simply a specific lien, to secure debt; *Newman v. De Lorimer*, 19-246.

Sect. 2201; recording law, as to chattels; object to prevent fraudulent credit by ownership presumed from possession; *Thomas v. Hillhouse*, 17-71.

Sect. 2201, the notice contemplated includes actual and constructive notice; *Allen v. McCalla*, 25-482.

Sect. 2201, mortgage of chattels not recorded; property retained by mortgagor; valid against existing creditors with notice; *Allen v. McCalla*, 25-477. (x.)

(x.) *Le Neve v. Le Neve*, 2 L'g Cas., Eq., 182, 184; *Mech. Bk. v. Seton*, 1 Pet., 209; *Clark v. Flint*, 22 Pick., 251.

Sect. 2201; recording law; property in possession of lessee; when sold left with him; not in actual possession of vendor; *Thomas v. Hillhouse*, 17-70; see *Sansee v. Wilson*, 17-582; *Case v. Burrows*, 54-683.

Sect. 2210; exception to rule of the section; where grantor of land without title executed to his grantor a mortgage, to secure part of the purchase money, on premises subsequently conveyed by the latter to the former; *Morgan v. Graham*, 35-215.

Sect. 2213; purchase of realty by husband, title to wife with agreement to convey to husband on request; not in nature of express trust; required written; *Cotton v. Wood*, 25-46. (y.)

(y.) *Livingston v. Livingston*, 2 Johns. Ch., 540; *Page v. Page*, 8 N. H., 187; *Runnels v. Jackson*, 1 How. (Mass.), 358; *McCulloch v. Cowher*, 5 Watts & S., 427; *Harder v. Harder*, 2 Sandf. Ch., 17.

Sect. 2217; so far as it relates to chattel mortgage, does not change the common law rule, as to equity of redemption; *Doane v. Garretson*; 34-353.

Sect. 2220 et seq.; do not require record of assignment of contract, for sale of school land, in commissioner's office; *Churchill v. Morse*, 23-232.

Sect. 2220 et seq.; record of contract for sale of school land in commissioner's office; not notice; *Churchill v. Morse*, 23-132.

- Sect. 2248; acknowledgments; retrospective only; not cure defects after in effect (1858); *Reynolds v. Kingsbury*, 15-239; *Jones v. Berkshire*, 15-240.
- Sect. 2249 (1858, ch. 30); curing defects of acknowledgment; invalid as to prior deeds; *Brinton v. Seevera*, 12-301.
- Sect. 2249; curing defects of acknowledgment, applies to all deeds actually recorded; *Brinton v. Seevera*, 12-302.
- Sect. 2252; acknowledgment by attorney in fact, as such, deed the voluntary act and deed of principal; valid; *Clark v. Connor*, 28-313.
- Sect. 2253; acknowledgment in substantial conformity with statute, valid; *Clark v. Connor*, 28-313.
- Sect. 2255; acknowledgment of wife's deed of separate property essential to record, not to validity; *Sannis v. Hervey*, 19-287. (z.)
- (z.) *Kerns v. Peeler*, 4 Jones L., 226; *Green v. Branton*, 1 Dev. Eq., 504; *Jackson v. Gilchrist*, 15 Johns., 89; *Constantine v. Van Winkle*, 6 Hill; S. C., 10 N. Y., 422; *Martin v. Dwelly*, 6 Wend., 9, 22; *Constantine v. Van Winkle*, 6 Hill reversing S. C. in 2 Hill, 240, re-affirmed, 10 N. Y., 422; *Catlin v. Ware*, 9 Mass., 218; 13 Mass., 223.
- Sect. 2257 (Stat., 1858), limits authority of equity to correct mistakes or omissions in wife's deed to deeds executed after statute in force; *Heaton v. Fryberger*, 38-186.
- Sect. 2268; tax deed; grantee is assignee within meaning thereof; *Childs v. Shower*, 18-273.
- Sect. 2269; to constitute color of title; possession bona fide for five years, in claimant's own right and benefit; *Lunquest v. Ten Eyck*, 40-215.
- Sect. 2274, authorizing money judgment for improvements of occupying claimant not valid; *Childs v. Shower*, 18-268. (a.)
- (a.) *Bank v. Dudley's, les.*, 2 Pet., 292; *Hunt v. M'Mahan*, 5 Oh., 132; 6 Oh., 10; *M'Coy v. Grundy*, 3 Oh., 463; *Armstrong v. Jackson*, 1 Blackf., 374; *Tyner v. Stoops*, 11 Ind., 22; *Jones v. Carter*, 12 Mass., 314; 2 Pick., 507; *Wittington v. Corey*, 2 N. H., 115; *Soc. etc. v. Wheeler*, 2 Galli., 105; *Ross v. Irving*, 14 Ill., 171; *M'Kinlay v. Halliday*, 10 Yerg., 479; 1 Yerg., 360; *Mathews v. Davis*, 6 Humph., 324; *Brown v. Storm*, 4 Verm., 37; 20 Verm., 614; *Saunders v. Wilson*, 17 Tex., 194; 24 Tex., 582; *Fowler v. Halbert*, 4 Bibb, 52; *Fisher v. Cockerill*, 5 Monr., 125; *Gaines v. Buford*, 1 Dana, 481; see *Bright v. Boyd*, 1 Story C. C., 442; *Jones v. Jones*, 4 Gill, 87; *Lamere v. Winter*, 13 Ala., 31; *Porter v. Hanley*, 5 Eng., 86; *Ford v. Halton*, 5 Cal., 319; *Morrison v. Robinson*, 31 Pa. St., 456; 23 Pa. St., 117; *Hearn v. Camp*, 18 Tex., 545.
- Sect. 2277; termination of homestead right, by death of owner and abandonment by widow or by death of owner and wife; heirs take free of debts, not binding it prior to owner's death; *Johnson v. Gaylord*, 41-366.
- Sect. 2281, does not apply to a third party, who purchases homestead after mortgage executed, to exempt it from foreclosure sale; *Barker v. Rollins*, 30-413.
- Sect. 2281; exemption of homestead from sale, in first instance, may be claimed in foreclosure proceeding or by supplemental showing; *Barker v. Rollins*, 30-413.
- Sect. 2281; to render homestead liable it is only necessary that the debt be created by written contract, executed by the persons having power to convey, expressly stipulating it is liable; *Foley v. Cooper*, 43-379.
- Sect. 2281, homestead included in execution sale en masse, after offer in parcels without bidders; deemed an exhausting of other property and sale not set aside; *Burmeister v. Dewey*, 27-472.
- Sect. 2282, land not connected with a house may be part of homestead; but, mere user and occupation of such land will not give it that character; there must be a continuous user, in good faith, as part of the homestead; *Reynolds v. Hull*, 36-395.
- Sect. 2295, death of wife; husband has possession and occupancy of homestead, without reference to who held the legal title or whether issue born; *Burns v. Keas*, 21-259; *Nicholas v. Purcell*, 21-266.
- Sect. 2295; setting off dower from homestead, on application of widow, is a disposition of homestead according to law; *Meyer v. Meyer*, 23-373.
- Sect. 2296; homestead descends to issue of husband or wife, which ever held legal title; *Burns v. Keas*, 21-261; *Nicholas v. Purcell*, 21-266.

- Sect. 2302; landlord has lien for rent on all crops grown on demised premises; *Secrest v. Stivers*, **35-581**.
- Sect. 2304, county court has no jurisdiction to grant administration of estate of a non resident decedent having no property in the county; some property coming in to the county for a temporary purpose will not give jurisdiction; *Christy v. Vest*, **36-287**.
- Sect. 2361; property of intestate set apart to widow, not used or needed by her as head of family; subject to distribution, not to debts; *Gaskell v. Case*, **18-149**, explained, *Paup v. Sylvester*, **22-376**.
- Sect. 2361; property set apart to widow, not needed or used by her as head of family; assets in hand of executor to be disposed of under law; *Paup v. Sylvester*, **22-375**; *Meyer v. Meyer*, **23-377**; *Ellsworth v. Ellsworth*, **33-168**.
- Sect. 2266-7; in summary proceedings for the discovery of assets of decedent, the court is limited to an examination of the person summoned; *Smyth v. Smyth*, **24-492**; *Rickman v. Stanton*, **32-137**; *Ivers v. Ivers*, **61-722**.
- Sect. 2366-7; summary proceeding to discover assets of decedent; no evidence admissible to contradict person summoned, to establish administrator's claim to property; *Smyth v. Smyth*, **24-493**.
- Sect. 2366-7; summary proceeding for discovery of assets; on ascertaining the person summoned has property of decedent, the court may order the delivery to adm'r, and enforce the order by imprisonment; *Rickman v. Stanton*, **32-137**.
- Sect. 2366-7; in summary proceedings for discovery of assets of decedent, an order for delivery, in absence of person affected, on testimony of witnesses, void; *Rickman v. Stanton*, **32-137**.
- Sect. 2374-88; administrator's sale of decedent's realty, under statute and subject to mortgage in which wife joined; purchaser takes discharge of dower; *Mead v. Mead*, **39-31**.
- Stat. 2375; administrator's sale of realty ordered without full statement of all claims against the state; if erroneous, not void, on collateral attack; *Myers v. Davis*, **47-328**.
- Sect. 2376; the court has jurisdiction to determine that the notice and service thereof, on application to sell real estate of decedent, were sufficient; determination, if erroneous, not subject to collateral attack; *Stanley v. Noble*, **59-669**.
- Sect. 2376; publication of notice to heirs, of administrator's sale of realty, two weeks in a weekly newspaper, as ordered by court, sufficient; *Read v. Howe*, **39-300**.
- Sect. 2388; limiting actions to set aside administrator's sale of land to 5 years, not apply where it is sought to avoid the sale for fraud; *Cowin v. Toole*, **31-518**.
- Sect. 2388; action to set aside administrator's sale of land for fraud; limitations run from time of discovery of fraud (§§ 2740-1); *Cowin v. Toole*, **31-518**.
- Sect. 2388; statute of limitations; no bar to set aside administrator's sale absolutely void; ex. gr., for want of notice; *Good v. Norley*, **21-201**; *Boyles v. Boyles*, **37-596**.
- Sect. 2391, supplies the rule of action where a claim against decedent is to be collected in county court; *Linn Co. v. Day*, **16-162**.
- Sect. 2391; oath to claim against estate; directory; filing not void if oath be not taken at filing; *Goodrich v. Conrad*, **24-257**; *Wile v. Wright*, **32-457**.
- Sect. 2392; admissions of administrator, as to payments on note due to estate, admissible in suit where he a party; *M'Kenzie v. Kitler*, **27-256**.
- Sect. 2393, does not abrogate the general rule admitting evidence of declarations and admissions of parties to record; *M'Kenzie v. Kitler*, **27-256**.
- Sect. 2395, does not make the jurisdiction, of district court, of executors depend on consent of the county court; *Sterritt v. Robinson*, **17-63**.
- Sect. 2395, inhibits claimant; it does not curtail jurisdiction of district court; *Sterritt v. Robinson*, **17-63**.

- Sect. 2395, approval of county court to presenting claim in district court should be of record; *Goodrich v. Conrad*, 24-236.
- Sect. 2397, claim filed against estate of principal debtor; no need to file as contingent claim; *Braught v. Griffith*, 16-33.
- Sect. 2405; claims against decedents; the section is an exception to the general rule of statute limitations, allowing judgment revived during 20 years; *Davis v. Shawhan*, 34-94.
- Sect. 2405; executor etc.; not to be construed to encourage delay in settlement of estates; *Brewster v. Kendrick*, 17-481.
- Sect. 2405; to entitle a claimant against estate of decedent to pay, from personal assets, compliance with section essential; *Davis v. Shawhan*, 34-94.
- Sect. 2405; whether a claimant, who does not file his claim against estate in apt time is entitled to equitable relief depends on the particular facts of his case; *Johnston v. Johnston*, 36-008.
- Sect. 2405; bar of claims against decedent; applies only to claims primarily sought to be made from personal assets; *Allen v. Moer*, 16-309; *Baldwin v. Tuttle*, 23-71; *Davis v. Shawhan*, 34-94; *Black v. Black*, 40-89.
- Sect. 2405; bar of claims against decedent; has no application to a claim secured by mortgage, creditor relying on his security; *Allan v. Moer*, 16-300; *Black v. Black*, 40-89.
- Sect. 2405, barring claims against estates of fourth class, applies only to claims existing at decedent's death, not to debts subsequently incurred by the estate; *Savary v. Sypher*, 39-679.
- Sect. 2405, as to claims against decedents; limitation does not apply to judgment lien on realty, operative during life of decedent; *Baldwin v. Tuttle*, 23-72; *Davis v. Shawhan*, 34-94.
- Sect. 2405; delay in proving claim against estate, caused by administrator's letters, calculated to induce a belief that further proof was not necessary, ground of equitable relief to remove bar of statute; *Baldwin v. Dougherty*, 39-55.
- Sect. 2405; claim against estate not filed within statutory period, in reliance on administrator's promise to pay and request not to sue, etc., ground for equitable relief; *Brayley v. Ross*, 33-506; *Burroughs v. M'Lain*, 37-191.
- Sect. 2405; promise of administrator to pay claim and his statement it is unnecessary to file it, sufficient ground for equitable relief, under the section, to claimant not filing claim against decedent's estate; *Burroughs v. M'Lain*, 37-191.
- Sect. 2405; promise of administrator to pay claim against estate; no claim book kept by county judge; estate unsettled; no equity to remove statutory limitation; *Davis v. Shawhan*, 34-94.
- Sect. 2419-20, to collect of sureties of executor on failure to pay on order of court; petition alleging breach of bond not necessary; *Hart v. Jewett*, 17-236.
- Sect. 2422; descent; limited, by § 2408, only as to amount of property, not as to character of interest of distributee; *Hale v. Hunter*, 24-182.
- Sect. 2422; descent; mother, the surviving parent of intestate child, takes one-half of personalty absolutely; *Hale v. Hunter*, 24-182.
- Sect. 2428, has reference to admeasurement of dower by county court; *Starry v. Starry*, 21-235.
- Sect. 2428; limitation as to admeasurement of dower to 10 years, applies only to proceedings in county court; *Sully v. Nebergall*, 30-342.
- Sect. 2435, that widow's dower can not be affected by any will of her husband, does not apply to personal property; hence, she can not claim as distributee of such property of her late husband, which he has fully disposed of by will; *Estate of Davis*, 36-28.
- Sect. 2435, did not require a widow to object to or relinquish her rights, under non inconsistent will, before claiming dower, where the dower was in fee simple and vested immediately; *Potter v. Worley*, 57-68.

- Sect. 2435; the widow, not objecting to the will of her late husband and relinquishing all rights thereby conferred is deemed to have accepted under it; her will subsequently published is not considered a renunciation; *Kyne v. King*, 48-24.
- Sect. 2437; widow of deceased husband does not take from a child who died before her husband; *M'Menomy v. M'Menomy*, 22-150; *Journell v. Leighton*, 49-603; *Will of Overdieck*, 50-246.
- Sect. 2437, the word "children," as used in this statute of descents, includes illegitimates; *M'Guire v. Brown*, 41-658; see *Milburn v. Milburn*, 60-413.
- Sect. 2442; recognition of illegitimate child need not necessarily be a formal avowal of parentage, established by letters and correspondence; *Crane v. Crane*, 31-304.
- Sect. 2442, illegitimate child recognized by parent inherits as though legitimate; *Crane v. Crane*, 31-304.
- Sect. 2447, action for breach of administrator's bond, by not reporting; report after suit is not a complete defense; *Clark v. Cress*, 20-52; see *Diehl v. Miller*, 56-314.
- Sect. 2447, 2456-7; administrator's settlement conclusive after three months, save for fraud, mistake or other equitable cause; *Patterson v. Bell*, 25-151.
- Sect. 2454; county court may allow administrator additional compensation for extraordinary service; *Patterson v. Bell*, 25-151.
- Sect. 2464; administrator de son tort, liable to creditor of decedent to value of property received; *Elder v. Littler*, 15-66.
- Sect. 2477; dower as at common law; *Huston v. Seeley*, 27-200.
- Sect. 2488-2493; alien not resident in U. S. can not take lands by inheritance; *Krogan v. Kinney*, 15-242; *Rheim v. Robbins*, 20-46.
- Sect. 2488-93; an alien can not inherit realty; *Brown v. Pearson*, 41-483.
- Sect. 2488-93 (1858); permits non resident aliens to take realty by will, only, by becoming residents; *Krogan v. Kinney*, 15-242.
- Sect. 2488-93; aliens may acquire, hold and transmit movable property; *Greenheld v. Morrison*, 21-539.
- Sect. 2490; death of wife without issue; husband takes but one-half of her estate, for dower and as heir; *Burns v. Keas*, 21-264; *Dodds v. Dodds*, 23-307.
- Sect. 2495; widow to take life estate in all realty, under will, has no distributive share, as in case of intestacy; *Dobson v. Dobson*, 30-411.
- Sect. 2497; intestate leaving neither wife, issue, mother or father; heirs of mother and father take, as though they had survived each, in possession of one-half of the estate; *Bassil v. Loffer*, 38-451.
- Sect. 2498; see § 2422, ante.
- Sect. 2499; personality in common use and joint possession of husband and wife; in control of husband; *Smith v. Hewett*, 13-96 (b.); *Odell v. Kinnard*, 14-413.
- Sect. 2499; personality in common use and joint possession of husband and wife; liable for his debts; *Smith v. Hewett*, 13-96 (b.); *Odell v. Kinnard*, 14-413.
- (b.) 17 Ala., 566; 3 J. J. Marsh., 280.
- Sect. 2499-500; control of husband over wife's personality, to render liable for his debts, must be with her permission or assent; *Nicholas v. Higby*, 35-403.
- Sect. 2499-50, 2502; wife's property; failure to record not to prejudice rights of wife as against husband; *Jones v. Jones*, 19-250. (c.)
- (c.) *Darby v. Callaghan*, 16 N. Y., 71; *Anderson v. Anderson*, 2 M. & K., 427; *Carmel v. Burke*, 2 P. Wins., 243; *Sherman v. Elder*, 24 N. Y., 381; *Merrit v. Lyon*, 3 Barl., 110; *Edger-ton v. Thomas*, 5 Seid., 40.
- Sect. 2500, 2502; wife a creditor for money loaned to husband, evidenced by note; on his insolvency on footing with other creditors; record of her claim of property in such case unnecessary; *Matter of Alexander*; 37-457.
- Sect. 2500, 2504; knowledge of wife's ownership of notes payable to her order and written securities in her name, requiring indorsement or assignment to transfer, presumed without record; *Nicholas v. Higby*, 35-401.

Sect. 2501; notice of wife's ownership of personalty, under control of husband, recorded 5 years; presumptive evidence of facts stated; *Keech v. Cowles*, 34-261.

Sect. 2502, personalty of wife in joint use and possession of husband and wife; exempt for husband's debt only by record; *Smith v. Hewett*, 13-96; *Odell v. Lee*, 14-413; *Goodrich v. Munger*, 30-349; *Presnall v. Herbert*, 34-513.

Sect. 2505, amended 1870, ch. 126; property of wife under control of husband not liable on judgment against him before marriage and notice of ownership in her, by record, not necessary to protect against levy; *Patterson v. Shearman*, 37-40.

Sect. 2505-6; a wife surety upon her husband's note; her separate property not liable; *Sweazy v. Kammer*, 51-643.

Sect. 2506, executory contract of wife, to purchase realty, is not in relation to her separate property within the statute; *Jones v. Crosthwait*, 17-402.

Sect. 2506, wife liable on covenants of deed of her own land; *Richmond v. Tibbles*, 26-48. (d.)

(d.) *Yale v. Dederer*, 18 N. Y. 265; *Bovius v. Cline*, 21 Ind., 371; *Klen v. Gibney*, 24 How. Pr., 31.

Sect. 2507, the wife is personally liable for expenses of the family; *Jones v. Glass*, 48-345.

Sect. 2528; marriage register of clerk of county court is proof of marriage, without evidence of authority to solemnize; *Verholf v. Houwenlengen*, 21-430. (c.)

(c.) *Hemmings v. Smith*, 4 Doug., 32.

Sect. 2537; divorce decreed; court may award alimony and custody of children, although no claim is made therefore by the pleadings; *Zuver v. Zuver*, 36-194.

Sect. 2537; power to change alimony decree is not power to re-try the cause; *Blythe v. Blythe*, 25-269.

Sect. 2537, power to modify decree of divorce is not limited to one year; *Andrews v. Andrews*, 15-424.

Sect. 2537; power to change decree for alimony; to be exercised only on change of circumstances since decree; *Blythe v. Blythe*, 25-268; *Wilde v. Wilde*, 36-321.

Sect. 2540; on disaffirmance of infant's contract, he is required to return only the property received and controlled after majority attained; *Jenkins v. Jenkins*, 12-199; See *Hawes v. R'y Co.*, 64-320.

Sect. 2541; minor engaged in business; to be liable on contract his infancy must be unknown to contracting party; *Beller v. Marchant*, 30-451; *Jaques v. Sax*, 39-370.

Sect. 2548; surety on guardian's bond, given on his appointment, not liable for moneys received by him from sale of ward's land; *Madison Co. v. Johnston*, 51-153. (f.)

(f.) *Lyman v. Conkey*, 1 Met., 317; *Williams v. Morton*, 38 Me., 47; *Henderson v. Coover*, 4 Nev., 429; *Warwick v. State*, 5 Ind., 350; *State v. Steel*, 21 Ind., 207; *Potter v. State*, 23 Ind., 607; *Coburn v. State*, 47 Ind., 321; *Andrew's heirs*, 3 Humph., 562.

Sect. 2550; but a reasonable time is allowed, after majority, to disaffirm minor's contract; *Wright v. Germain*, 21-587.

Sect. 2552; guardian may, by leave of court, execute deed of trust of ward's realty, as well as mortgage; *Foster v. Young*, 35-40.

Sect. 2553; notice of application of guardian to sell land of minor is jurisdictional: sale void if it not given; *Rankin v. Miller*, 43-21.

Sect. 2556, in the absence of a sale bond, it is error to approve of guardian's sale of ward's realty; *Bunce v. Bunce*, 59-537.

Sect. 2560; limitation as to guardian's deed does not estop the heir, whose property is sold without the semblance of authority; *Pursley v. Hayes*, 22-25.

Sect. 2560; limitation upon questioning guardian's deed does not apply to review in appellate court; *Pursley v. Hayes*, 22-24. (g.)

(g.) *Vencleave v. Milliken*, 13 Ind., 105.

Sect. 2560; limitation on attacking guardian's sale applies only where purchaser has

- held continuous possession for the statutory period; *Washburn v. Cairnichael*, **32-479**.
- Sect. 2613; remedy at law, adequate; no ground to abate or dismiss equitable proceeding; *Savery v. Browning*, **16-251**.
- Sect. 2615; motion to transfer from chancery to law docket should be when answer filed; *Moore v. Dist. Towns*, **28-427**.
- Sect. 2617; cause not transferred from law to chancery docket until issue joined; **12-586**; qualified, *Rosierz v. Van Dam*, **16-182**.
- Sect. 2621; judgment on note given for land, by maker holding bond for title, not bar subsequent action by maker for breach of the bond existing when action on the note was brought; *Farfield v. McNany*, **37-77**.
- Sect. 2629; slander; defendant may allege circumstances in mitigation without confessing, averring belief in truth, or denying malice; *Desmond v. Brown*, **33-14**.
- Sect. 2632; appeal lies from overruling motion to set aside verdict and quash writ ad quod damnum; *Burnham v. Thompson*, **35-423**.
- Sect. 2634; same cause of action in different counts; election of counts only on affidavits showing that the different counts are for one cause; *R. R. Co. v. Perkins*, **28-282**.
- Sects. 2636, 3546, 3550; requires the opinion of the supreme court to be written and filed, on each error assigned, before the cause is decided; *Baker v. Kerr*, **13-386**.
- Sect. 2664-5, as to signing record by judge, directory; *Childs v. M'Chesney*, **20-434**; *Hamilton v. Barton*, **20-508**.
- Sect. 2664-5; judge not signing record; judgment not invalidated; *Childs v. M'Chesney*, **20-434**; *Hamilton v. Barton*, **20-508**; *Traer v. Whitman*, **56-445**.
- Sect. 2664-6; district judge may correct or expunge any entry before record signed; *Shepherd v. Brenton*, **15-87**.
- Sect. 2667, does not deprive district court of power to supply omission, from record, of consent to mode of trial; *Buckwalter v. Craig*, **24-216**.
- Sect. 2687, gives power to court to change place of sitting, by consent; *O'Hagen v. O'Hagen*, **14-267**.
- Sect. 2708, gives an attorney a lien on money due his client in adversary's hands, from date of notice; *Myers v. M'Hugh*, **16-337**.
- Sect. 2723, renders § 2729 inoperative; jury year commences Jan. 1; *State v. Delong*, **12-454**; *State v. Schilling*, **14-457**.
- Sect. 2723-4, amended 1870, ch. 167, § 3; jurors for circuit and districts courts may be drawn from the same list; *State v. Lawrence*, **38-58**.
- Sect. 2729, inoperative by reason of § 2733; jury year commences Jan. 1; *State v. Delong*, **12-454**; *State v. Schilling*, **14-457**.
- Sect. 2738; jury called from 10 of 20 townships of county, is from the body of the county; *State v. Arthur*, **39-634**.
- Sect. 2738; jury list destroyed by fire; district court may cause new panel summoned; *State v. Arthur*, **39-632**.
- Sect. 2740, applies to actions, on writings, both at law and in equity; *Newman v. De Lorimer*, **19-246**.
- Sect. 2740, applies to foreclosure of mortgage; *Hendershott v. Ping*; **24-137**.
- Sect. 2740; allowance of claim against estate and order of payment by county court; not a judgment within section, to bar in ten years; *Smith v. Shawhan*, **37-534**.
- Sect. 2740, cl. 1; bars action for death by negligence, in two years; *Sherman v. Stage Co.*, **22-557**.
- Sect. 2740, action, against railroad company, for injuries by negligence of co-employee, barred in two years from cause accrued; *Nord v. R. R. Co.*, **37-499**.
- Sect. 2740, subd. 2; limitations; on official bond on defective execution of county warrant; three years from date of issue; *Prescott v. Gonser*, **34-179**.
- Sect. 2143, 2740; limitations; failure of county treasurer to account for and pay over

revenue, is an omission of official duty within the statute; *State v. Dyer*, 17-225. (*h.*)

(*k.*) *State v. Newman*, 22 Oh., 567; *Bank v. Conway*, 18 Oh., 154; *Knox Co. v. Beam's etc.* 22 Oh., 147.

Sect. 2740 (Code, 1851. § 1659), action against county treasurer, not maintainable, on bond, unless brought within three years of cause accrued; *State v. Dyer*, 17-233; *State v. Henderson*, 40-245.

Sect. 2740, subd. 3, proceeding to set aside execution sale of land sold in gross, actual fraud alleged; not within limitation of section; *Williams v. Allison*, 33-284.

Sect. 2740, subd. 4; foreclosure of title bond, as a mortgage; barred in ten years from cause accrued; *Day v. Baldwin*, 34-383.

Sect. 2742; to remove bar of limitations it must affirmatively appear from the testimony or answer of defendant, that the cause of action still justly subsists; *Howells v. Patton*, 23-536.

Sect. 2742; no judgment against defendant where statutory limitations are pleaded, on his own testimony, as a witness for plaintiff, unless it affirmatively shows the debt justly subsisting; *Stewart v. M'Millan*, 34-456.

Sect. 2742, as to exception from statute of limitations, if the answer or testimony of defendant shows a justly subsisting cause of action, repealed by Stat., 1870, ch. 167, § 35; *Springer v. Clay Co.*, 35-242.

Sect. 2743; limitations; continuously boarding or providing for another constitutes an open current account; *Wendeling v. Besser*, 31-250.

Sect. 2743, continuous accruing account for board, rent etc., is continuous open current account within the section; *Moser v. Crooks*, 32-175.

Sect. 2743; continuous open current account must be uninterrupted, consisting of a running connected series of transactions; an account broken by hiatus of nearly two years, then resumed by charges differing in nature and not in the ordinary course of business of the creditor is not such; *Tucker v. Quimby*, 37-19.

Sect. 2743; contract to support child for a price; continuous account until child of age or contract ended; *Carroll v. M'Coy*; 40-40.

Sect. 2743; all items of account relating to one transaction, constitute a continuous account, regardless of balances stated; *Lamb v. Hanneman*, 40-42.

Sect. 2745; contract matured in sister state: limitations from time party resident in this; *Petchell v. Hopkins*, 19-533. (*i.*)

(*j.*) *Darling v. Wells*, 1 Cush., 508; *Tugart v. State*, 15 Mo., 209; *Teisel v. Blackwell*, 6 N. H., 557; *Dwight v. Clark*, 7 Mass., 515; *Smith v. Crosby*, 2 Tex., 414; *Hays v. Gage*, 2 Tex., 501; *Tupper v. Nash*, 1 Caines, 402.

Sect. 2745-6; action fully barred by the law of the place of residence while out of the state; action fully barred in Iowa; *Thompson v. Read*, 41-49.

Sect. 2745-6, action not fully barred by law of place of defendant's residence; time of residence out of state not reckoned, in determining if term of limitation expired; *Thompson v. Read*, 41-49.

Sect. 2746; debt barred in state of contract and of defendant's residence; barred in Iowa; *Sloan v. Waugh*, 18-226.

Sect. 2746; bar of limitations of sister state, as to contract, sued in Iowa, only bars action when completed before defendant became resident in Iowa; *Petchell v. Hopkins*, 19-534; *Moulton v. Walsh*, 30-363.

Sect. 2746; when a personal action is fully barred by the laws of another state, in which defendant has resided, it is barred in this state, whether or not the cause of action arose in this state; *Davis v. Harper*, 48-514.

Sect. 2746, amended, 1870 ch. 167; in foreclosure; answers setting up limitations of N. Y., prior residence of defendant and that action on note is barred there; demurrable in not alleging suit on mortgage barred; *Gillett v. Hill*, 32-222.

Sect. 2746 and Stat. 1870, ch. 167; this section is not available against a cause of ac-

- tion arising in Iowa unless the action was fully barred when the statute of 1870, took effect; *Goodnow v. Stryker*, 62-224.
- Sect. 2747; limitations; extension to minor expires with first year of majority; *Campbell v. Long*, 20-386.
- Sect. 2748, 4111; limitations begin to run from cause accrued; no subsequent disability suspends the statute, save as is expressed; not run unless there be a cause of action and one to prosecute; *Sherman v. Stage Co.*, 24-553.
- Sect. 2750; statute of limitations does not run against the state; the words "bodies corporate and politic" do not include the state; *Des Moines v. Harker*, 34-85.
- Sect. 2751; statute of limitations; a new promise to pay, made before debt barred, will prevent the bar of the statute; *Penley v. Waterhouse*, 3-418; *Lindsey v. Lyman*, 37-206.
- Sect. 2751; new promise to prevent bar of limitations must be written and signed, by promisor; *Parsons v. Carey*, 28-432.
- Sect. 2751; payment and indorsement on note will not prevent the bar of limitations; *Parsons v. Carey*, 28-432; *Harrencourt v. Merritt*, 29-72; *Roberts v. Hammon*, 29-129.
- Sect. 2751, debt barred; parol promise to pay, in future and by a different mode; no new contract, enforceable; *Price v. Price*, 34-407.
- Sect. 2757; party in beneficial interest on note, etc., may sue in his own name, without legal title; *Conyngham v. Smith*, 16-471; *Cottle v. Cole*, 20-486; *Grimmell v. Warner*, 21-13; *Trustees v. Schwagler*, 37-579; *Searing v. Berry*, 58-24.
- Sect. § 2758; action lies to trustee of an unincorporated association, for its use; *Laughlin v. Greene*, 14-94.
- Sect. § 2760; applies to non negotiable choses in action; semble, it would apply to a negotiable note assigned, after due, by mere delivery; *Richards v. Daily*, 34-429.
- Sect. 2760; assignee of negotiable note after due takes free from all independent matters; subject to equities attaching to note itself; *Richards v. Daily*, 34-429.
- Sect. 2760, equities between the original parties to a note, which may be pleaded against the assignee, must inhere in or grow out of the note itself; *Bone v. Tharp*, 63-226.
- Sect. 2764; parties to action; suit may be brought against one partner alone, on partnership note signed in firm name; *Ryerson v. Hendrie*, 22-484.
- Sect. 2764; assignor of non negotiable note, who guarantees, is a proper defendant with maker; *Tucker v. Shiner*, 24-335; *Huse v. Hamblin*, 29-506.
- Sect. 2764; action on joint obligation may be against administrator of one deceased or against survivors; *Sellon v. Braden*, 13-367; *Smith v. M'Fadden*, 56-486.
- Sect. 2764, 2880, 3323, execution in favor of sole plaintiff may be set off against execution against such plaintiff as joint defendant; *Ballinger v. Tarbell*, 16-493.
- Sect. 2795, as to venue; wife's separate property is property under a charge; suit to affect it should be brought where it lies; *Hawke v. Urban*, 18-85.
- Sect. 2795, venue of foreclosure of mortgage of realty; in county where land or some part lies; *Chadbourne v. Gilman*, 23-183; see Code, 1873, § 2573, ante.
- Sect. 2798; right to bring action at the county of performance means a place stated, not a place implied; *Hunt v. Bratt*, 23-172; *Manley v. Wolfe*, 24-141.
- Sect. 2771; injury to wife, husband joined; claim in his right joined and recovery for loss of service etc.; *M'Donald v. R. R. Co.*, 26-140.
- Sect. 2775, as to joinder of claims of husband in action for injury to wife; expressly repealed, 1870 ch. § 167, § 35; *Musselman v. Galligher*, 32-390.
- Sect. 2778, 2893; jurisdiction to order administrator's sale of real estate is given by service of notice on guardian of ward and appearance; *Bickel v. Erskine*, 43-220.
- Sect. 2785, scil. fa. is the remedy to subject property of individual partners to judgment against the firm; *Davis v. Buchan*, 12-576; *Hamsmith v. Espy*, 13-440.
- Sect. 2785; execution returned nulla bona as to partnership, but, individual property existing; sufficient on which to proceed against latter; *Bank v. Harvey*, 16-146.

- Sect. 2787; attachment plaintiff, or his assignee, may maintain suit on delivery bond; *Rowley v. Jewett*, 56-494.
- Sect. 2800, venue; one passing through a county from one which was his residence, to another, intended to be his residence; no residence in state for purposes of suit; suable where found; *Cohen v. Daniels*, 25-90.
- Sect. 2800; non resident suable in any county where he or his co-defendants may be found; *Swan v. Smith*, 26-88.
- Sect. 2802; as to actions brought in wrong county, does not apply to actions before J. P. in wrong township; *Post v. Brownell*, 36-497.
- Sect. 2802; that a defendant sued in wrong county may demand change of venue does not apply to a proceeding before a justice of peace; *Post v. Brownell*, 36-493.
- Sect. 2802; capital case; court may allow jury to separate at adjournments, upon admonition, non obstante objection of defendant; *State v. Felter*, 25-71.
- Sect. 2810; change of venue, by agreement of parties, is not subject to this section as to withdrawal of order on non payment of costs or non transmissal of papers within two days; *Carroll Co. v. Emigrant Co.*, 37-373.
- Sect. 2810; change of venue ordered in term; payment of costs awarded any part of day required by statute is sufficient, if before order vacated; *Bacon v. Black*, 33-153.
- Sect. 2812; appearance to object to sufficiency of notice is appearance in case; *Branch Bk. v. Van*, 12-525.
- Sect. 2812; original notice must fix the appearance term by name; "next term" is not enough; *Branch Bk. v. Van*, 12-524; *Van Vark v. Van Dam*, 14-233.
- Sect. 2812; original notice, otherwise formal, which notified defendant to appear at the "next" term, without explicitly naming the term, sufficient; *Farmers Ins. Co. v. Highsmith*, 44-332.
- Sect. 2813; petition must be filed by day fixed in notice, or the action is discontinued; *Hudson v. Blaufus*, 22-326; see *Hildreth v. Harney*, 62-421.
- Sect. 2813; petition not filed at time stated in notice; action deemed discontinued; *Morgan v. Sinall*, 33-119.
- Sect. 2815; in computing time, as to service of original notice, both day of service and first day of appearance term excluded; *Robinson v. Foster*, 12-188; *Conklin v. Marshalltown*, 66-123.
- Sect. 2816; for service of notice at residence etc., does not apply to actions against partnerships; *Brydolf v. Wolf*, 32-512.
- Sect. 2817; return of notice, served "at his usual place of residence in" etc., sufficiently describes defendant's house; *Farris v. Ingraham*, 34-234.
- Sect. 2817; return, showing service upon defendant's agent, "in the city of Waterloo, August 5, 1872," and that the agent refused to receive a copy, sufficient; *Farmers Ins. Co. v. Highsmith*, 44-332.
- Sect. 2825; semble; service of notice of appeal on a director of railroad company is sufficient service; *Robertson v. R. R. etc. Co.*, 27-248.
- Sect. 2832; actual service beyond the state; affidavit that service can not be made in the state unnecessary; *Miller v. Davison*, 31-430.
- Sect. 2835; actual personal service of original notice beyond the state superseles necessity of publication; *Miller v. Davison*, 31-439.
- Sect. 2840, subd. 3; appearance by motion to set aside sale, under a judgment on notice by publication, is not an appearance, in attachment suit, justifying personal judgment; *Osborn v. Cloud*, 21-239. (j.)
- (j.) *Delaplain v. Hitchcock*, 6 Hill, 12; *Cline v. Green*, 1 Blackf., 53; *Sears v. Low*, 2 Gilm., 261.
- Sect. 2840, ch. 3; appearance to object to notice and to cross examine plaintiff's witness is appearance to action; *Wilsey v. Maynard*, 21-110.
- Sect. 2840; appearance to object to service of notice of appeal; general appearance and waiver of defects; *Robertson v. R. R. etc. Co.*, 27-248.
- Sect. 2842; the doctrine lis pendens does not apply as to vendor or vendee, not parties to action; *Parsons v. Hoyt*, 24-157.

Sect. 2842; vendee of land pending action against grantor, affecting title, chargeable with notice, even though grantor concealed knowledge thereof; *Blanchard v. Ware*, 37-308.

Sect. 2844; petition may join causes arising from tort and on contract, if between the same parties, in same right and of same venue; *Turner v. Nat. Bk.*, 26-566.

Sect. 2852; defendant in equity avails of sixty days before default only by appearance at the appearance term (if intervening) and desire expressed for time; *M'Kinley v. Betchtel*, 12-562.

Sect. 2852, in equity; service ten days before the beginning of term, no appearance; default entered, though sixty days not elapsed since service complete; *M'Kinley v. Betchtel*, 12-562.

Sect. 2863; an adjudication of insufficiency is necessary to authorize a judgment, as for want of pleading, when answer (the third) is insufficient; *Riddle v. Backus*, 36-431.

Sect. 2876; demurrer for cause not enumerated; overrule; *Orman v. Orman*, 26-363.

Sect. 2876; non joinder of parties demurrable; misjoinder of parties not; *Mornan v. Carroll*, 35-24.

Sect. 2876; "defect of parties," occurs when one who should be plaintiff or defendant is omitted; *Mornan v. Carroll*, 35-24.

Sects. 2876, 2018, 2061, demurrer will not reach an argumentative pleading; *Davis v. Bonar*, 15-174.

Sect. 2877; demurrer at law indefinite; ex. gr., "not state facts sufficient to constitute cause," etc.; disregarded; *M'Kellar v. Stout*, 13-488; *M'Kellar v. Stout*, 14-360.

Sect. 2880, equitable defense to action for possession of land permissible; *Rosierz v. Van Dam*, 16-177 (*k.*); *Van Orman v. Spafford*, 16-189; *Kramer v. Conger*, 16-436; *Van Orman v. Merrill*, 27-478.

(*k.*) *Hinman v. Judson*, 13 Barb., 629; *Dobson v. Pearce*, 2 Kern., 166; *Foot v. Sprague*, 12 How., 355; *Hunt v. Farmer's Loan etc., Co.*, 18 How., 418; *Hill v. Butler*, 6 Oh. St., 207; *Richardson v. Bates*, 8 Oh. St., 257; *Jones v. Letcher*, 13 B. Monr., 365; *Rosley v. Mattingly*, 14 B. Monr., 99; *Dorsey v. Reese*, 14 B. Monr., 157; 14 B. Monr., 349; *Smith v. Maberly*, 15 B. Monr., 73; *Foster v. Watson*, 16 B. Monr., 387; *Bates v. Culver*, 17 B. Monr., 167.

Sect. 2880; see §§ 2764, 2880, 3228, ante.

Sect. 2886; claims for damages, for tort, may be set off; *Campbell v. Fox*, 11-321.

Sects. 2889, 2801; fraud may be pleaded as a counter claim or cross demand; it may defeat plaintiff's action and take judgment; *Coe v. Lindley*, 33-442. (*l.*)

(*l.*) *Harrington v. Stratton*, 22 Pick., 514; *Sandford v. Handy*, 23 Wendell, 260; *Van Epps v. Harrison*, 5 Hill, 63; *Lewis v. Wilson*, 1 Edwards's Ch., 305.

Sect. 2893, see §§ 2778, 2893, ante.

Sect. 2904, answer to verified petition not sworn to is properly stricken, on motion; *Harper v. Drake*, 15-157.

Sect. 2915, a sworn answer not call for greater proof than if not verified; *Mitchell v. Moore*, 24-396.

Sect. 2917, privilege to admit matter otherwise deemed controverted by law, does not preclude independent facts in avoidance; *Viele v. Ins. Co.*, 26-42.

Sect. 2917, plaintiff filing a writing admitting matters alleged in answer should notify that he expects to show matter in avoidance; *Viele v. Ins. Co.*, 26-43.

Sect. 2918; demurrer will not reach an alternative allegation, of cause of action, in petition; *Turner v. Nat. Bk.*, 26-566. (*m.*)

(*m.*) *Royce v. Brown*, 3 Prac. N. Y., 385; *Simpson v. Loft*, 8 Prac. (N. Y.), 234; *Andrews v. Shoffer*, 12 How. (N. Y.), 441; *De Will v. Swift*, 3 How. (N. Y.), 280; *Gording v. M'Allister*, 9 How. (N. Y.), 123; *Howell v. Fraser*, 6 How. (N. Y.), 221.

Sect. 2918; see §§ 2876, 2918, 2061; ante.

Sect. 2920, 2063-4; to set aside judgment by confession, for insufficient statement, a copy is not a necessary exhibit; *Vannice v. Green*, 14-263.

Sect. 2923-5; allegation of corporate capacity taken true; not applicable to allegation of consolidation; *Koons v. Ry. Co.*, 23-494.

Sect. 2928; slander; petition need only allege words spoken of and concerning plaintiff; *Swearengen v. Stanley*, 23-120.

Sect. 2929; libel; defendant may plead in justification, or mitigation, or both; *Kinyon v. Palmer*, 18-334.

Sect. 2929, single and indivisible facts set up, as a defense, in one count; no severance of defenses; *Kinyon v. Palmer*, 20-140.

Sect. 2930; equitable owner of note may assert his rights, by intervening in action by holder against maker; *Taylor v. Adair*, 22-283.

Sect. 2930, 2932; replevin against an officer making a levy; judgment, designating the rights of parties, concludes all parties, including intervenor, with a substantial claim; *Witter v. Fisher*, 27-13.

Sect. 2933; as to personal judgments against wife; applies to contracts before or after enactment; *Van Metre v. Wolf*, 27-346.

Sect. 2933, authorizes personal judgments against a wife, on contracts she has a right to make; *Van Metre v. Wolf*, 27-345.

Sect. 2933; subjecting after acquired property of wife to personal judgment, against her, does not impair obligation of contract; *Van Metre v. Wolf*, 27-346.

Sect. 2934, different causes of action arising out of the same transaction in several counts; allowable; *Camp v. Wilson*, 16-226.

Sect. 2934; demurrer will not reach alternative allegation of cause of action, in petition; *Turner v. Nat. Bk.*, 26-566. (n.)

(n.) See note *m*, page 311.

Sect. 2934, several causes stated in separate counts; election of counts not required; *Reed v. Howe*, 26-251.

Sect. 2939; petition against assignor guaranteeing and maker of non negotiable note, must charge each in separate counts; *Tucker v. Shiner*, 24-335.

Sect. 2946, paragraphs of answer not constituting a defense; stricken on motion, as redundant; *Evans v. Roberts*, 29-475.

Sect. 2960; action on attachment bond; plaintiff must allege facts constituting breach and non payment of damages; *Ryder v. Thomas*, 32-56; *Horner v. Harrison*, 37-378.

Sect. 2963-4; see §§ 2920, 2963-4, ante.

Sect. 2964; instruments of evidence not the basis of action; set off, counter claim or cross demand not required to be set out in plea; *Taylor v. R. R. Co.*, 25-377.

Sect. 2967; see Stat., 1862, ch. 28, post.

Sect. 2978; defect of petition, not affecting a substantial right of defendant, will not reverse; *Smith v. Milburn*, 17-32. (o.)

(o.) *Robinson v. Ins. Co.*, 1 Johns., 602.

Sect. 2979; continuance authorized, on amendment of pleading, only when the court is satisfied the amendment prevents readiness for trial; *State v. Tieman*, 39-475.

Sect. 2981, trial court may allow amendment not verified to verified pleading; *Tegler v. Shipman*, 33-197.

Sect. 2985; interrogatories annexed to answer; both interrogatories and answers evidence; *Nat. Bk. v. Torry*, 30-89.

Sect. 2985-6; party answering interrogatories attached to pleading, may state any new matter concerning the cause of action and either party may read the answers as a deposition in the cause; *Gwyer v. Figgins*, 37-521.

Sect. 2985, et seq.; defective pleading not aided, on demurrer, by interrogatories or answers; *Lane v. Kregle*, 22-407.

Sect. 2991; interrogatories propounded to defendant with affidavit of true disclosure will establish a claim; unanswered they constitute proof of claim but will not justify judgment without trial; *Perry v. Heighton*, 26-452.

Sect. 2991; after interrogatories filed and failure to answer, non suit; *Perry v. Heighton*, 26-453.

Sect. 2999; equity cause tried on written evidence; bill of exceptions not needed; *Bank v. Harvey*, 16-143; *Van Orman v. Spafford*, 16-191.

Sect. 2999, 3000; foreclosure of mortgage, tried as at law; *Carleton v. Byington*, 17-580; *Carleton v. Byington*, 18-483.

Sect. 3006, does not give continuance as a matter of right, in a criminal case, to next term after indictment found; *State v. Arnold*, 12-482.

Sect. 3014; application for continuance should be overruled if not made by the second day of the term, unless delay excused; *Lucas v. Casady*, 12-560.

Sect. 3036, means that the challenge of jurors alternates between parties, plaintiff first challenging; *Davenport Gas Co. v. Davenport*, 13-232.

Sect. 3059; general exception to the giving of each instruction, several propositions of law being involved; not good on appeal unless the whole charge erroneous; *Dav. Gas Co. v. Davenport*, 13-236 (p.); *Weihermi v. Leonard*, 13-336; *Loomis v. Simpson*, 13-333; *Cousins v. Westcott*, 15-254; *Jack v. Naber*, 15-452; *Armstrong v. Pierson*, 15-476; *Lyons v. Thompson*, 16-60; *Brown v. Jefferson Co.*, 16-343; see Code, 1873, § 2787, *infra*.

(p.) *Jones v. Osgood*, 2 Seld., 233.

Sect. 3061; object of allowing examination of premises by jury is to enable the jurors to apply the testimony; not to base verdict on view; *Close v. Samms*, 27-538.

Sect. 3070; trial court has a discretion to receive evidence out of usual order, not surprising party but promotive of justice, *Huey v. Huey*, 26-537.

Sect. 3070, authorizing admission of evidence before final submission, to correct oversight etc., applies only to civil cases; *State v. Shean*, 32-03.

Sect. 3070; witness may be recalled, in a criminal case, after evidence closed, to explain misunderstanding, etc.; *State v. Shean*, 32-03.

Sect. 3073, as to signing verdict, directory; *Morrison v. Overton*, 20-400.

Sect. 3073; verdict not signed by foreman; not cause to reverse; *Morrison v. Overton*, 20-405.

Sect. 3079; court may instruct jury to find special verdict, on issue on foreclosure of mortgage; *Carleton v. Byington*, 18-484.

Sect. 3079; refusal to require special finding, on a conclusion drawn from many facts and involving the issue on trial; not error; *Ins. Co. v. Packet Co.*, 32-246.

Sect. 3080; judgment on special finding is against a general verdict only when the finding inconsistent with verdict and, on admitted facts, gives right to recover; *Lamb v. Presb. Soc.*, 20-130. (q.)

(q.) *Birkhead v. Brown*, 5 Hill, 634; *Sisson v. Barrett*, N. Y., 406; *Barto v. Himrod*, 8 N. Y., 483; *Leach v. Church*, 10 Oh., 148; *Reber v. Manuf. Co.*, 12 Oh., 175.

Sect. 3088; finding of court should state facts found, not evidence; *Myers v. Smith*, 15-183 (r).

(r.) *Baurs v. Williams*, 11 Wheat., 415; *Sisson v. Barrett*, 2 Comst., 406, *dist'd*.

Sect. 3090; ordinary action not referrible without consent of parties; entitled to jury; *M' Martin v. Bingham*, 27-233.

Sect. 3090; no reference of cause under this section; issues to be made up under code; *State v. Inskeep*, 12-267; *Bristow v. Guess*, 12-405.

Sect. 3093-4; plaintiff may dismiss his action after referee's report prepared, it not being filed; *Belzor v. Logan*, 32-323.

Sect. 3100; proof that the oath was taken by referee complies with the statute; *Sears v. Sellev*, 28-505.

Sect. 3102; pending cause referred to arbitrators, with authority to fix a day for hearing; competent to set a day beyond ten days; *Corbitt v. Nealy*, 29-446.

Sect. 3107, objection to evidence must state ground of objection; *Gelpcke v. Lovell*, 18-18; *Carleton v. Byington*, 18-483.

Sect. 3107, objection to evidence, "because of incompetency" sufficient; *Greenleaf v. R. R. Co.*, 30-303.

- Sect. 3112; a belief, evidence may be found, is no ground for new trial; *Alger v. Meritt*, 16-124.
- Sect. 3112, 3116; in application for new trial, under these sections, a valid defense need not be established before judgment is set aside; *R. R. Co. v. Gillett*, 38-437.
- Sect. 3114; motion for new trial, filed within three days; amendable, during the term, by matter germane to the original grounds stated; *Sowden v. Craig*, 20-478.
- Sect. 3116; application for new trial, for newly discovered evidence, to be by petition, as in ordinary proceeding; *Nat. Bk. v. Murdough*, 40-27.
- Sect. 3116; evidence discovered too late before adjournment of court may be ground for motion for new trial after; *Alger v. Meritt*, 16-124.
- Sect. 3116; new trial will not be granted for new evidence merely cumulative; *Sturgeon v. Ferron*, 14-160; *Alger v. Meritt*, 16-126.
- Sect. 3116; appeal from judgment on verdict and from order refusing new trial under section; judgment over six months before appeal; no review of proceedings prior to judgment; *Cohol v. Allen*, 37-450.
- Sect. 3116; right of party, upon petition for new trial, under the section, determinable on demurrer to petition; *Cohol v. Allen*, 37-451.
- Sect. 3116; see §§ 3112, 3116, ante.
- Sect. 3122-3, 3536, on reversal the supreme court may leave plaintiff's judgment undisturbed and order new trial as to cross action as to which error is found; *M'Afferty v. Hale*, 24-362.
- Sect. 3127; plaintiff can not take a non suit after final submission to court; *Hall v. Turner*, 23-216; *Mansfield v. Wilkerson*, 26-485.
- Sect. 3135; no judgment for part of claim, on motion before trial, though it be not controverted by pleadings, if the claim is not mature; *King v. Howell*, 28-67.
- Sect. 3135; party not entitled to judgment for so much of a claim as is not controverted by pleadings, on motion before trial, unless it is clearly not controverted; *King v. Howell*, 28-67.
- Sect. 3135; proper to render judgment against a railroad co., for city tax for a given year on certain property, where the company did not controvert liability, but, confessed tax due and offered judgment therefor; *Davenport v. R. R. Co.*, 38-637.
- Sect. 3150, refers only to cases where the court is authorized to enter default; *Boals v. Shule*, 29-508; *U. S. Rolling Stock Co. v. Potter*, 48-67.
- Sect. 3150, limits setting judgment by default aside to judgment term; *Harper v. Drake*, 14-535.
- Sect. 3150; simple default may be set aside at any term, including that at which judgment is taken; *Harper v. Drake*, 14-535.
- Sect. 3150; judgment by default without legal authority, may be set aside without any showing; *Boals v. Shules*, 29-503; *U. S. Rolling Stock Co. v. Potter*, 48-67.
- Sect. 3160, for setting aside defaults on service by publication, does not apply to divorces; *Gilruth v. Gilruth*, 20-226; *Whitcomb v. Whitcomb*, 46-444.
- Sect. 3160; service by publication; motion to re-try cause a pre-requisite of appeal; *Berryhill v. Jacobs*, 19-348.
- Sect. 3160; service by publication; filing motion for re-trial within two years, a sufficient appearance in court; *Conklin v. Johnson*, 34-267.
- Sect. 3160; judgment by default, on service by publication, affirmed for want of motion for new trial below; not preclude motion under the section; *Berryhill v. Jacobs*, 20-246.
- Sect. 3160; order of sale by executor, of realty, made on default of one served by publication only, may be set aside within two years; *Huston v. Huston*, 29-348.
- Sect. 3160; on re-trial, upon judgment by default opened, the only question is as to the sufficiency of defense; if it be not sufficient the original judgment is simply confirmed and continued in force; *Morton v. Coffin*, 29-239.
- Sect. 3160, new trial under the statute, defendant served by publication; judgment

thereon no bar to equitable action to set aside sale for fraud; *Fleming v. Hutchinson*, **36-525**. (s.)

(s.) See *Goucher v. Clayton*, 11 Jurist (N. S.), 107.

Sect. 3163; judgment by default on service by publication, quieting title to realty; purchaser in good faith protected though new trial granted under Stat. (§ 3160) and error appears in first judgment; *Union Bk. v. Ames*, **37-675**.

Sect. 3174, application for attachment, on ground of disposal of property and not leaving sufficient to pay debts must also show removal or disposition thereof beyond the state; *Mingus v. M'Leod*, **25-453**; *Bundy v. M'Kee*, **29-254**.

Sect. 3177; attachment; requiring judge's indorsement of value to be seized, applies only to actions ex delicto; *Johnson v. Butler*, **2-535**; *Raver v. Webster*, **3-502**; *Lord v. Gaddis*, **6-57**; *Decorah v. Dunston*, **34-361**.

Sect. 3177; damages from diseased condition of sheep represented sound on sale; judge's indorsement of amount to be attached not needed; *Sloan v. Smith*, **26-80**.

Sect. 3191, bond to release property from attachment, may be taken and approved by sheriff in vacation, if before writ returned, and by clerk, if return made; *Budd v. Durall*, **36-317**.

Sect. 3193; municipality may waive exemption from garnishment; *Clapp v. Walker*, **25-316**.

Sect. 3196-7, 3270; property of debtor in custodia legis; subject to attachment; *Patterson v. Pratt*, **19-361**; *Hoffman v. Wetherell*, **42-90**.

Sect. 3207; right of garnishee to exoneration, by paying to sheriff, will not justify judgment for interest; *Moore v. Lowrey*, **25-340**.

Sect. 3211; garnishee, indebted by negotiable or assignable paper, not to be made liable unless such paper is delivered to him or he is exonerated from or indemnified against future liability thereon; but, if he be guilty of laches, by failing to require indemnity, he precluded from defending against holder who received it before garnishment; *Yocum v. White*, **36-289**.

Sect. 3219-20; attachment; bond not in manner or with conditions of statute not a delivery bond, though intended as such and it will not give possession of attached property; *Jenning v. Warnock*, **37-281**.

Sect. 3233; to discharge attachment levy, under the section, for exemption of property, evidence must show clear right; *M'Laren v. Hall*, **26-300**.

Sect. 3242; writ of attachment issued under seal of one court the action pending in another; amendment, by attaching proper seal, proper; motion to quash not lie; *Shaffer v. Sundwall*, **33-582**.

Sect. 3243, lien of attachment does not take precedence of prior unrecorded mortgage; *Nat. Bk. v. Hayzlitt*, **40-659**.

Sect. 3248; execution sale of real in one county on judgment in another; valid between parties and persons with actual notice, though no transcript of judgment was filed; *Hubbard v. Barnes*, **29-242**; *M'Ginnis v. Elgell*, **39-422**.

Sect. 3249; object of filing transcript of judgment in another county is to effect a lien and give notice by record; *Hubbard v. Barnes*, **29-241**; *M'Ginnis v. Edgeil*, **30-422**.

Sect. 3270; garnishee is entitled to notice of further doing, if issue be not taken, on answer, at term at which it is filed; *Kienne v. Anderson*, **13-566**.

Sect. 3272, 3322; judicial sale; the word "defendant" includes not only execution defendant but, also, defendant in garnishment proceeding, auxiliary to execution; *Earhart v. Gant*, **32-483**.

Sect. 3272, 3322; assignment of note by officer levying thereon, has precisely the same effect as if made by execution debtor; *Earhart v. Gant*, **32-484**.

Sect. 3275, confers no independent power to tax and does not require municipal corporations to levy judgment tax in excess of maximum rate established by statute; *Land Co. v. Sac Co.*, **39-135**.

- Sect. 3275, does not confer power to tax on municipality, where not otherwise existing; *Clark v. Davenport*, 14-499.
- Sect. 3275; mandamus will issue to compel tax levy to pay judgment against a school dist. towns.; section applicable to all civil corporations; *Boynnton v. Dist. Towns.*, 34-513; *Dist. T. v. Ind. Dist.*, 63-189.
- Sect. 3275-6; executions; not special laws; *Porter v. Thomson*, 22-394.
- Sect. 3275-6 executions; not invalid as to title of act; *Porter v. Thomson*, 22-393.
- Sect. 3291, object of proceeding, under this section, to learn the extent of interest of execution defendant in partnership, of co-partners for shares etc. and firm indebtedness, to protect all parties; *Richards v. Haines*, 30-577.
- Sect. 3291, does not change rule as to primary liability of firm assets to claim of firm creditors and to those of partners for amount of shares; *Richards v. Haines*, 31-576.
- Sect. 3293; subsequent purchaser, who has assumed the mortgage debt and is co-defendant in foreclosure may stay execution of decree without consent of mortgagor; *Moses v. Clerk of Ct.*, 12-140.
- Sect. 3294; stay of execution waives appeal; *Seacrest v. Newman*, 19-324.
- Sect. 3318; provisions of section applicable to sales under both special and general execution; *Fleming v. Maddox*, 30-243; *Jensen v. Woodbury*, 16-516.
- Sect. 3318; execution sale without notice to owner in actual occupation or possession irregular and set aside on motion; *Jensen v. Woodbury*, 16-518.
- Sect. 3318; actual occupation, within the meaning of the section, does not require residence on the land; *Fleming v. Maddox*, 30-242. (t.)
- (t.) *Roberts v. Long*, 12 B. Monr., 196; *Campbell v. Thomas*, 12 B. Monr., 83; *Humphrey v. Jones*, 3 Monr., 261.
- Sect. 3318; notice of levy of execution and sale in foreclosure not served on defendant in actual possession and occupancy; sale set aside, on motion made in apt time; *Fleming v. Maddox*, 30-241.
- Sect. 3321; execution sale of property not debtor's; set aside, on notice to debtor, on motion; *Chambers v. Cochran*, 18-162.
- Sect. 3322; see §§ 3272, 3322, ante.
- Sect. 3328; see §§ 2764, 2889, 3328, ante.
- Sect. 3333; semble, defendant or purchaser only can object to redemption by creditor before six months expired; not junior lien holder; *Wilson v. Conklin*, 22-454; *Kilbride v. Munn*, 55-417.
- Sect. 3334; mortgagee has a right of redemption, from execution sale, notwithstanding his contingent interest; *Crossen v. White*, 19-110.
- Sect. 3342-7, requirement, that redeeming creditor enter on sale book the utmost amount, he is willing to credit on his claim etc., applies only to redemption after nine months; therefore redemption may be by payment direct to purchaser; *Goode v. Cummings*, 35-70.
- Sect. 3360; appraisement law; execution sale must bring to debtor two-thirds of fair value of property, when added to prior incumbrances; *Sargent v. Piranian*, 16-469; *McDonald v. Jonson*, 48-77.
- Sect. 3360-73 (L. 1860) providing for appraisement of real estate sold under execution, applies to sale foreclosing mortgage under special execution, as well as to sales under general execution; *Davis v. Spaulding*, 36-611.
- Sect. 3362; want of qualification of one appraiser not vitiate execution sale of land; ex. gr., he not householder; *Hill v. Baxter*, 32-305. (u.)
- (u.) *Wheaton v. Sexton*, 4 Wheat., 503; *Voorhis v. B'k U. S.*, 10 Pet., 473; contra *Eddy v. Knap*, 2 Mass., 154; *Whitman v. Tyler*, 8 Mass., 284; *Williams v. Amory*, 14 Mass., 29; *Libby v. Copp*, 3 N. H., 45.
- Sect. 3362, appraisement law; one resident thirty-five miles from land to be sold at judicial sale; prima facie not of the neighborhood and incompetent, as appraiser; *Woods v. Cochrane*, 38-485.
- Sect. 3371; debtor may elect to have sale of land under execution made subject

- to redemption; but must fill notice of election, with clerk, prior to levy of execution; *Davis v. Spaulding*, 36-613.
- Sect. 3375-6-8, judgment against corporation; execution with clause to levy on property of stockholders; they not judgment debtors within the statute; *Bailey v. Dubuque etc. Co.*, 13-98.
- Sect. 3397, empowering district court clerk to enter judgment by confession, does not confer judicial power; *Grattan v. Matteson*, 54-231; see *Kendig v. Marble*, 58-531.
- Sect. 3401; action before justice of the peace; offer by defendant to confess judgment for a sum less than recovery; on appeal sum reduced to amount of offer; costs subsequent to offer on plaintiff; *Watts v. Lambertson*, 39-273.
- Sect. 3405, tender of sum and costs to dismiss action; not relieve from costs; vendor must be to allow judgment; *Quinton v. Van Tuyle*, 30-357.
- Sect. 3419; receiver may be appointed in action at law; *Jones v. Graves*, 20-597.
- Sect. 3419; district court judge may appoint a receiver, in proper case, during vacation; *French v. Gifford*, 30-160.
- Sect. 3422; no written pleadings required to dispose of motion to compel attorney to pay over money collected for client; *Mansfield v. Wilkerson*, 26-485.
- Sect. 3442; provision not confined to foreign corporations; domestic corporation may be required to secure costs; *Ins. Co. v. Henderson*, 38-448.
- Sect. 3442; affidavit, in support of motion for security for costs, need not set forth facts of defense; only that defendant has a good defense; *Ins. Co. v. Henderson*, 38-448.
- Sect. 3447; an attorney is disqualified as surety on bonds for costs, injunction, attachment and similar bonds; *Massie v. Mann*, 17-132.
- Sect. 3451, may include award of costs where defendant recovers on counter claim or set off; *Arthur v. Funk*, 22-239.
- Sect. 3459; compensation of one, agreed on by parties and appointed by court, to report testimony, in civil cause, taxable as costs; *Kuhnlee v. Ind. Dist.*, 36-100.
- Sect. 3465, only empowers courts to prescribe who to pay costs; *Ripley v. Gifford*, 11-371.
- Sect. 3467; see Stat., 1862, ch. 174, § 4, post.
- Sect. 3499; semblé; false statement in pleading, after full opportunity to deny, not fraud to vacate judgment; *Miller v. Albaugh*, 24-130.
- Sect. 3499, subd. 4; application to vacate judgment under this section may state new facts, constituting a defense to claim on which judgment based; *Reno v. Teagarden*, 24-149.
- Sect. 3499, subd. 4; prior motion for new trial is no bar to proceeding to vacate judgment for fraud; *Reno v. Teagarden*, 24-149.
- Sect. 3499, subd. 7, unavoidable casualty etc., to vacate judgment, must be such as prevents defense; *Miller v. Albaugh*, 24-130.
- Sect. 3499, subd. 7; on the way to defend, severe illness incapacitating to attend and good defense; judgment by default vacated; *Luscomb v. Maloy*, 26-445.
- Sect. 3501; default excused by absence with ample time to return, which prevented by sickness; *Brewer v. Holborn*, 34-474.
- Sect. 3499, 3500; court may correct mistake of judgment entry, on motion, after satisfaction of erroneous judgment within one year; *Goldsmith v. Clausen*, 14-270.
- Sect. 3501; to vacate judgment by default, defendant must show sufficient excuse for non defense and sufficient defense; *Brewer v. Holborn*, 34-473.
- Sect. 3501, objection to application to vacate judgment, for insufficiency or informality, too late on trial or appeal; *Turner v. Nat. Bk.*, 30-193.
- Sect. 3515, appeal not dismissed or judgment affirmed on motion, for transcript not filed by appellant, where notices of appeal not served on clerk and appellee until within fifteen days of term, though supersede as bond filed fifteen days; *Pratt v. Stage Co.*, 26-242.
- Sect. 3537-8; appeal for delay; judgment, by supreme court, against appellant and

- sureties with damages only where judgment for money is superseded by bond; *Berryhill v. Keilmeyer*, **33-22**.
- Sect. 3540; does not apply where judgment reversed on appeal without supersedeas; property or money paid over under judgment, recovery only by ordinary action; *Hanschild v. Stafford*, **27-302**.
- Sect. 3541; plaintiff or his attorney purchasing at execution sale, with knowledge of pending appeal, not bona fide purchaser; *Twogood v. Franklin*, **27-244**; *Munson v. Plummer*, **57-737**; *S. P., Merritt v. Grover*, **57-493**.
- Sect. 3541, defendant in judgment failing to give notice of appeal before judicial sale of property; judgment creditor purchasing is bona fide purchaser; judgment subsequently reversed if he again recovers; *Frazier v. Crafts*, **40-112**.
- Sect. 3545; default not reversed save after motion below to set aside; *Pigman v. Denney*, **12-396**; *M'Kinley v. Betschel*, **12-562**; *Downing v. Harmon*, **13-530**; *Van Vark v. Van Dam*, **14-233**; *Bethel v. Leay*, **14-593**; *Barnes v. Hayick*, **15-602**; *Carleton v. Byington*, **17-560**; *Hunt v. Stevens*, **25-262**.
- Sect. 3546; supreme court will not regard assignments of error not specifically pointed out, under the section; *Peck v. Hendershott*, **14-45**; *Wilson v. Hillhouse*, **14-201**.
- Sect. 3556; see § 2636, ante.
- Sect. 3550; see § 2636, ante.
- Sect. 3553, modifies the common law, to allow replevin of property in custodia legis, but exempt from seizure; *Cooley v. Davis*, **34-130**.
- Sect. 3554, 3563, on replevin, dismissed by plaintiff, defendant may have alternative judgment de retorno habendo or damages against principal and sureties; *Wilkins v. Treynor*, **14-393**.
- Sect. 3562-3; entire legal rights of parties to replevin should be settled in main action; *Hayden v. Anderson*, **17-103**.
- Sect. 3563; in replevin the person entitled to possession may have retorno habendo or judgment for value; *Parsons v. Hedges*, **15-121**.
- Sect. 3563, alternative judgment, in replevin, for property or value authorized; *Clark v. Warner*, **32-219**.
- Sect. 3570, does not require evidence of title, as an exhibit to petition, to recover lands; *Boardman v. Beckwith*, **18-293**.
- Sect. 3579, as to damages in action of right, applies only where plaintiff holds a limited and determinable estate, expiring etc. pendente lite; *Jordan v. Ping*, **32-65**.
- Sect. 3579; plaintiff conveying the property pending action of right; suit not abated, but may progress in his name; *Jordan v. Ping*, **32-65**; *Snyder v. Phillips*, **66-482**.
- Sect. 3582-S, reversal and remand of judgment in action of right; order entered in district court; right of party to apply for new trial within two years; *Butterfield v. Walsh*, **25-264**.
- Sect. 3584, giving two years in which to move for new trial, applies to action for recovery of realty, not to equitable action to quiet title; *Russell v. Nelson*, **32-218**.
- Sect. 3598, bill of quiet title is not a suit for recovery of land, within the section; *Gardner v. Gardner*, **25-104**.
- Sect. 3601 et seq., proceeding to quiet title maintainable against non resident; *Miller v. Davison*, **31-440**.
- Sect. 3602; no general judgment against mortgagor not the debtor, on foreclosure; *Chittenden v. Gossage*, **18-158**; see *Well v. Churchman*, **52-255**.
- Sect. 3634, applies only to those made parties to foreclosure; *Anson v. Anson*, **20-59**.
- Sect. 3664, does not change the common law rule, that junior mortgagor not a party to foreclosure is not barred of right to foreclose against mortgagor or of redemption; *Anson v. Anson*, **20-59**; *Knowles v. Rablin*, **20-103**.
- Sect. 3664, to make judgment on note secured by mortgage a lien from record of mortgage; judgment must so order; *Redfield v. Hart*, **12-356**.
- Sect. 3664; action at law on notes secured by mortgage; junior lien holder, on the land covered, has right to redeem only as herein provided. It is a right as distin-

- guished from an equity of redemption. The judgment is properly made a lien on the land covered by the mortgage and may be enforced by general execution; *Mayer v. Bk.*, **44-214**.
- Sect. 3667; decree of foreclosure of mortgage, for instalment of interest, may order sale for payment of principal with rebate of interest; *Stafford v. Maus*, **38-140**.
- Sect. 3670; penalty for non satisfaction of mortgage paid on record within six months from request; not avoided by subsequent entry before suit; *Deeter v. Crossley*, **26-183**.
- Sect. 3670, satisfaction of mortgage on record, under the section, must be express; deed of premises not referring to mortgage insufficient; *Deeter v. Crossley*, **26-184**.
- Sect. 3671, delay to file notice of election, that land be sold under execution subject to redemption, until after execution levied defeats the right to insist on sale subject to redemption; *Gillett v. Edgar*, **22-295**. (v).
- (v.) *Evans v. Landon*, 1 Gilm., 307.
- Sect. 3671; does not defeat right of forfeiture and require foreclosure on contract of sale and purchase of land non obstante stipulation of parties; *Ia. Land Co. v. Mickel*, **41-409**.
- Sect. 3671-2, place vendor and vendee in the same position, in respect of the remedy, when vendor's lien has attached, as mortgagor and mortgagee; *Johnson v. M'Grew*, **42-561**.
- Sect. 3671-2; vendor of realty has a lien for unpaid purchase money, which follows the land in to the hand of a subsequent grantee with notice; *Webster v. M'Collough*, **61-499**.
- Sect. 3680; arbitrators need not return a separate finding of facts and conclusions of law; *M'Knight v. M'Cullough*, **21-114**.
- Sect. 3698; contract, by owner with another, to pilot and run a raft to a point named and price stated; raft liable for wages of hands employed by contractor to run; *Hanson v. Hiles*, **34-352**.
- Sect. 3601; bond for title; remedy not confined to mode prescribed; *Hershey v. Hershey*, **18-27**.
- Sect. 3713-5, does not abrogate the rule of law limiting recovery for nuisances, by individuals, to cases in which special damage sustained; *Prosser v. Ottumwa*, **42-511**.
- Sect. 3732, 3743; right to preside over city council, a franchise within the sections; *Cochran v. M'Cleary*, **22-87**.
- Sect. 3778, injunction to restrain judgment obtained by fraud of plaintiff's attorney, is not to enjoin civil proceedings within the section; *Way v. Lamb*, **15-81**.
- Sect. 3784; provisions making tax deed conclusive of vital matters in taxing, of doubtful validity; *Allen v. Armstrong*, **16-513**.
- Sect. 3788-9, giving authority to issue injunction in ordinary action does not confer, on a law court, general or special chancery jurisdiction to grant remedy beyond enjoining repetition of acts the basis of pending action; *Richmond v. R. R. Co.*, **33-476**.
- Sect. 3794; action on injunction bond; error in judge to discharge jury and try; *Parker v. Slaughter*, **24-253**.
- Sect. 3798; injunction; section does not authorize prohibition of debtor's sale of realty, at instance of creditor; *Buchanan v. Marsh*, **17-496**.
- Sect. 3850; amount claimed the criterion of jurisdiction; justice of peace has no authority to give judgment for \$100, interest and costs; *Galley v. Tama Co.*, **40-50**.
- Sect. 3853, jurisdiction of J. P., in attachment, extends through county; *Leversee v. Reynolds*, **13-311**; *Riddle v. Allender*, **13-311**.
- Sect. 3853, jurisdiction of J. P., in replevin, extends over county; *Biddle v. Allender*, **14-411**.

- Sect. 3853; jurisdiction, in replevin, attaches in the county where the property is situated at suit commenced; not where property is found by the writ; *Craft v. Franks*, 34-505.
- Sect. 3857, requiring J. P. to enter on docket process issued and return of service of original notice, directory; failure so to enter not oust of jurisdiction or invalidate judgment; *Bridges v. Arnold*, 37-223.
- Sect. 3886, defendant appearing and answering, before J. P., is not in default, by non appearance on the day the case is set for trial; *Douglass v. Langdon*, 29-246.
- Sect. 3887, does not contemplate notice of motion to set aside default before J. P.; *Stivers v. Thompson*, 15-3.
- Sect. 3895, "forthwith," as to rendition of judgment, as used, means reasonable time; *Burchett v. Casady*, 18-344.
- Sect. 3911, judgment, not repealed by §§ 3246, 3359, 3909-10; *Givens v. Campbell*, 20-82.
- Sect. 3911, judgment; of J. P. not docketed in district court; J. P. not issue execution after five years; *Givens v. Campbell*, 20-82.
- Sect. 3917, as to appeal from J. P., refers only to parties to the action; *Crites v. Littleton*, 23-207. (w.)
- (w.) *Martin v. Kanouse*, 9 Abb. Pr., 330; *Mills v. Hoag*, 7 Paige, 18; 8 Wend., 452; *Baggott Boulger*, 2 Duer., 160.
- Sect. 3926, 3929-30; on appeal from J. P. no compulsory trial unless ten days between appeal taken and first day of term; *Seeberger v. Miller*, 20-429.
- Sect. 3926, 3930; notice to appellee not necessary to perfect appeal from J. P., and, want of notice will not authorize dismissal; *Bond v. Davis*, 37-163.
- Sect. 3928; district court may hear evidence aliunde, to correct mistake of J. P.; *Brown v. Beesett*, 13-187.
- Sect. 3928; authorizes district court, on appeal in criminal case, from J. P., to supply omission to state plea, "not guilty"; *State v. M'Combs*, 13-427.
- Sect. 3954, administrator may sue in forcible entry etc.; *Beezley v. Burgett*, 15-192. (x.)
- (x.) *Jameson v. Smith*, 4 Bibb, 307; *Wright v. Williams*, 5 Cow., 501.
- Sect. 3973; statute requiring witness to understand the obligation of State; not in conflict with constitution, art. 1, § 4; *Kilburn v. Mullen*, 22-501.
- Sect. 3978, 3980-1; joint trial of two, or more, defendants jointly indicted; each may call co-defendant as witness; *State v. Gigher*, 23-319; *State v. Donovan*, 41-588.
- Sect. 3978, 3980-1; one indicted, for a criminal offense, is not a competent witness for himself, nor compellable to testify against himself; *State v. Laffer*, 38-423; *State v. Bixby*, 39-467.
- Sect. 3980, only affects the competency of a party as witness in whose behalf action is against an administrator; *Romans v. Hays*, 12-271; *Terhune v. Henry*, 13-100.
- Sect. 3980; witness; applies only to cases in settlement of estates of decedents; *Bradley v. Kavanagh*, 12-275.
- Sect. 3980, interest does not disqualify a witness; *Gates v. Hamilton*, 12-51.
- Sect. 3980; witness; applicable only where the real party in interest is dead; *Watson v. Russell*, 18-82.
- Sect. 3980; generally, administrator may be a witness for the estate; *Schmid v. Kreimer*, 31-480.
- Sect. 3980, 3983; wife joined with husband in suit; not thereby made competent witness; *Russ v. Steamboat*, 14-375. (y.)
- (y.) *Erwin v. Smaller*, 2 Sandl., 340; *Pillow v. Bushnell*, 4 How. Pr., 9; *Hasbrouck v. Vandervoort*, 5 Seld., 153.
- Sect. 3982; wherever a party to the record was competent to prove a particular fact by former rules of evidence, this section does not render him incompetent; *Nash v. Gibson*, 16-305; *Sykes v. Bates*, 26-521; *Cummins v. Hull*, 35-254.

- Sect. 3982; witness; the prohibition, of the statute, applies to proof of facts by a party not, from their nature, confined to himself; *Nash v. Gibson*, 16-306.
- Sect. 3982; plaintiff may prove loss, before intestate's death, of writing sued on, in action against administrator; *Nash v. Gibson*, 16-306.
- Sect. 3982, in action by or against an executor, party is competent to establish loss of writing, to admit secondary evidence of contents; *Keech v. Cowles*, 34-261.
- Sect. 3982, death of attaching creditor, does not disqualify plaintiff, in replevin, as witness to recover property attached by sheriff; *Bevan v. Hayden*, 13-126.
- Sect. 3982; exclusion of adverse party, when executor etc. is a party, does not extend to wife of claimant; she competent to support claim; *Shafer v. Dean*, 29-140; *Wendeling v. Besser*, 31-248.
- Sect. 3982; action to recover possession of property of intestate; administrator a competent witness; *Bradley v. Kavanagh*, 12-274.
- Sect. 3982; person summoned in summary proceeding, to discover assets of decedent, not a witness precluded from testifying where administrator is an adverse party; *Smyth v. Smyth*, 24-103.
- Sect. 3982; suit, by surviving partner, for injury to partnership property; defendant not incompetent witness, as in suit where an executor or administrator is an adverse party; *Brown v. Allen*, 35-313.
- Sect. 3982; action to enforce conveyance of realty, under parol contract with one since deceased; administrator is properly made party, but, not necessarily; evidence of plaintiff and wife properly admitted; *Campbell v. Mayes*, 38-10.
- Sect. 3982, contest between creditors, as to funds in hand of administrator of one of the debtors; administrator made a party is not an adverse party, under the statute, and contesting creditor is a competent witness; *Gordon v. Kennedy*, 36-168.
- Sect. 3982; action by assignee of note, executed by deceased against administrator; payee of note competent to witness for plaintiff; *Burroughs v. M'Lain*, 37-191.
- Sect. 3982; action by assignee in bankruptcy of surviving partner; defendant competent witness as to transactions with deceased partner; *Ruddick v. Owen*, 33-405.
- Sect. 3982; action by administrator against administrator; neither a competent witness; *Schmid v. Kreismer*, 31-180.
- Sect. 3982; executor a party; a party is allowed to testify as to a particular fact which, from necessity of case, was competent at common law; *Sykes v. Bates*, 26-524.
- Sect. 3982; administrator is a competent witness, in enforcing a claim against estate, to show settlement prior to decedent's death; *Stiles v. Estate etc.*, 30-61.
- Sect. 3982; defendant is a competent witness as to usury, though the suit is by executor or administrator; *Rinehart v. Buckingham*, 34-410.
- Sect. 3982; defendant dying pending suit, administrator substituted; deposition of plaintiff taken before death, not admissible; *Quick v. Brooks*, 29-485.
- Sect. 3982; see § 1791, ante.
- Sect. 3983; wife not competent witness for husband; *Karney v. Paisley*, 13-91.
- Sect. 3983, wife competent witness for husband, if he waive the prohibition of the section; *Russ v. Steamboat*, 14-363; *Jordan v. Henderson*, 19-566.
- Sect. 3983; husband competent witness for wife, if she waives the prohibition of the section; *Blake v. Graves*, 18-315; *Sylvester v. Fleming*, 19-567.
- Sect. 3983, husband and wife joint defendant; the wife, interested in her own right, is a competent witness for plaintiff, even against objection of husband; *Richards v. Burden*, 31-310.
- Sect. 3984; exclusion of husband or wife, as witness, relates only to communications during marriage; *Romans v. Hays*, 12-271.
- Sect. 3984; after death of husband, widow is competent, as to matters she knew of her own knowledge; *Romans v. Hays*, 12-271.
- Sect. 3995, published map, etc.; evidence only when made by one indifferent between parties; *Pfotzer v. Mullaney*; 30-200.

- Sect. 3995, by making books of science or art admissible as evidence, does not exclude other evidence, on the same matters, which was before admissible; *Brodhead v. Wiltse*, 32-431.
- Sect. 3999; book of account referred to by witness to aid statement; book admissible without formal proof; *Davenport v. Cummings*, 15-221.
- Sect. 4006-7; memorandum of evidence of contract may be by several distinct papers; *Grimes v. Hamilton Co.*, 37-294.
- Sect. 4006-7; statute of frauds; contract by resolution of supervisors and acceptance, in compromise of suit not under the section or necessarily written and signed by parties; the resolution and acceptance comprise written evidence of contract; *Grimes v. Hamilton Co.*, 37-294.
- Sect. 4007, frauds; subd. 4, has reference to duration of venue of lease; *Sobey v. Brisbee*, 50-106 (z.); *Jones v. Marcy*, 49-190.
- Sect. 4007, frauds; subd. 5, has no reference to interests in lands; *Sobey v. Brisbee*, 20-106. (z.)
- (z.) *Hollis v. Edwards*, 1 Verm., 179; *Bracegirdle v. Hecald*, 1 Barn. & Ald., 722; *Young v. Dake*, 1 Seld., 464; *Wilson v. Martin*, 1 Den., 602; *Delano v. Montague*, 4 Cush., 42.
- Sect. 4007-8; statute of frauds; personalty not owned by vendor and ready for delivery, contract of sale and for possession and lien not within the statute requiring writing, *Brown v. Allen*, 35-307.
- Sect. 4007-8; statute frauds; statute does not declare the enumerated contracts void; it relates only to evidence by which contracts are provable; *Brown v. Allen*, 35-309; *Berryhill v. Jones*, 35-230.
- Sect. 4009; vendee otherwise entitled to performance, defendant not admitting or denying unwritten contract, contract enforced though the statute of fraud be set up; *Auter v. Miller*, 18-410.
- Sect. 4010; plaintiff calling defendant as witness, to show parol agreement, can not impeach him; *Hunt v. Coe*, 15-199.
- Sect. 4010, parol will not establish a contract for the sale of goods, no part of which delivered nor of purchase money paid, unless it be of him against whom contract sought to be enforced; an agent of vendor is not within the exception; *Burnside v. Rawson*, 37-640.
- Sect. 4011, as to effect of notary's certificate of protest, in evidence; applicable to civil causes only; *State v. Reidel*, 26-437.
- Sect. 4063, copies of laws of sister state, published by authority thereof, evidence; *Webster v. Rees*, 23-270.
- Sect. 4069; dedimus to sister state or Canada, need only name the county and state of commissioner's residence; *Lyon v. Barrows*, 13-429.
- Sect. 4069; dedimus, to foreign country, must state name of city or town of commissioner's residence; *Lyon v. Barrows*, 13-429.
- Sect. 4069; direction of commission to take deposition, to "any notary in and for," a stated county and state, sufficiently specific; *Sheriff v. Hull*, 37-176.
- Sect. 4070; when plaintiff relies, for specific performance, on evidence of defendant, he must rely solely on it; *Auter v. Miller*, 18-411.
- Sect. 4111; corporation liable, civilly, for wrongful act of its servants, done in its employment, producing death; *Donaldson v. Miss. etc. Co.*, 18-283.
- Sect. 4111; right of action for wrongful act producing death; and recovery accrue to estate, not to next of kin; *Sherman v. Stage Co.*, 24-568; *Walters v. R. R. Co.*, 36-460.
- Sect. 4111; employe of railroad company injured by negligence of co-employe; company "the perpetrator;" *Philo v. R. R. Co.*, 33-48.
- Sect. 4111; see §§ 2748, 4111, ante.
- Sect. 4145, amended 1864, ch. 46, and 1870, ch. 46; compensation of sheriff limited by statute; no recovery for services on a quantum meruit; *Wapello Co. v. Monroe Co.*, 39-350.

Sect. 4147, purpose to graduate salary of sheriff by population; Garber v. Clayton, 19-30.

Sect. 4152; J. P. entitled to continuance fee in criminal, as in civil, case; Evans v. Story Co., 35-127.

Sect. 4153; district court may, by rule, limit fees to witness in several cases, at one time, to those allowed in one case; Meffert v. R. R. Co., 34-431; Hardin v. Poik Co., 39-662.

Sect. 4172, continuance of action as by law therefor in force, applies only to actions pending at adoption, not to executions to be issued etc., Gray v. Iliff, 30-197.

Sect. 4187, repealed ch. 136 code, 1851; Ripley v. Gifford, 11-368.

Sect. 4192; indictment for murder in the first degree, not in perpetration or attempt to commit arson, rape, robbery, mayhem or burglary, must charge intent to kill and killing wilful, deliberate and premeditate; State v. M'Cormick, 27-408; State v. Watkins, 27-418; State v. Boyle, 28-523; State v. Knouse, 29-119; State v. Thompson, 31-394.

Sect. 4213, extortion and pecuniary advantage not necessary ingredients of maliciously threatening to injure another with intent to compel an act against his will; State v. Young, 26-123.

Sect. 4220, section erroneously compiling statute 1838, ch. 50, § 1; punishment for assault and battery; imprisonment not exceeding 30 days or fine not over \$100; State v. Lee, 37-404.

Sect. 4221; jurisdiction of prosecution for procuring abortion is in the county where the drugs or other means administered, not where miscarriage takes place; § 4507 has no application; State v. Hohenbeck, 36-113.

Sect. 4226; arson; to constitute a barn, it is not necessary it be designed or used, in whole or part, for storage of produce; State v. Smith, 28-507.

Sect. 4231; see Stat., 1862, ch. 53, post.

Sect. 4235, breaking, etc., building in which are valuable things; necessary to name owner of building or aver it unknown; State v. Morrissey, 22-159. (a.)

(a.) Willis v. People, 1 Scam., 399; Comm. v. Williams, 2 Cush., 582; Spencer v. State, 13 Oh., 401; Dutcher v. State, 18 Oh., 308.

Sect. 4237; information, before J. P., in words of statute, sufficient; State v. Sipult, 17-575.

Sect. 4233; stable is not a "dwelling house, store or any public or private building;" State v. Sipult, 17-575.

Sect. 4241, one falsely personating another and receiving property intended for him personated, is guilty of larceny; State v. Brown, 25-564.

Sect. 4241, trespass not a necessary ingredient of larceny under this section; State v. Brown, 25-565.

Sect. 4243; deputy state treasurer is an officer, within the section, liable for embezzlement; State v. Brandt, 41-606.

Sect. 4243; indictment for embezzlement, under the section, should allege the public money loaned, to be, also, unaccounted for. To constitute the offense it must be both misapplied and lost to state; State v. Brandt, 41-612; State v. Parsons, 54-407.

Sect. 4243; embezzlement of public money, under the section, consists only in converting etc. so much thereof, entrusted to accused, as is taken and unaccounted for; State v. Brandt, 41-630.

Sect. 4245; embezzlement by carrier; limited to property delivered to be carried for hire; conversion of property delivered for storage not within the section; State v. Stoller, 38-322.

Sect. 4247, applies simply for the punishment of a common and notorious thief, under an ordinary indictment for larceny; State v. Riley, 28-550.

Sect. 4206, not punishable to resist a peace officer arresting without warrant; State v. Lovell, 23-304.

- Sect. 4290, Stat. 1868, ch. 150, resisting officer; road supervisor not such officer as contemplated by statute; the statute contemplates only such officers as are authorized to execute legal process; *State v. Putnam*, 35-562.
- Sect. 4299; a constable may be guilty of the offense of oppression in office under this section; offense not confined to judicial officers; *State v. Berans*, 37-180.
- Sect. 4302, ordering erection of bridge, costing more than \$5000, without county vote; doing an act prohibited within statute; *State v. Conlee*, 25-242.
- Sect. 4320, indictment for obstructing railroad track need not aver the malicious etc. placing of the obstruction which actually obstructed or hindered train; *State v. Clemens*, 38-257.
- Sect. 4321; two acts of private incontinence will not sustain indictment for lewd and lascivious conduct; *State v. Marvin*, 12-502 (b); see *State v. Kirkpatrick*, 63-357.
(b.) *Searls v. People*, 13 Ill., 597; *Comm. v. Catlin*, 1 Mass.
- Sect. 4324; verdict of guilty of wilful trespass need not find value of property taken; *State v. Gigher*, 23-319.
- Sect. 4326; malicious injury to a church, indictable; *State v. Brant*, 14-181.
- Sect. 4337; voting in township not of residence, an offense; *State v. Minnick*, 15-125.
- Sect. 4337; one voting in a wrong township is guilty of illegal voting; *State v. Minnick*, 15-125.
- Sect. 4347; prosecution for adultery commenced by wife; her further appearance is not essential to prosecution; *State v. Dingee*, 17-233; *State v. Baldy*, 17-44.
- Sect. 4347 prosecution for adultery commenced by husband or wife, continued without their further co-operation; *State v. Baldy*, 7-43; *State v. Dingee*, 17-234.
- Sect. 4347; adultery; immaterial whether prosecution be commenced before J. P. or grand jury; *State v. Dingee*, 17-233.
- Sect. 4347, adultery; only the guilty husband or wife can be prosecuted; not co-actor; *State v. Roth*, 17-341.
- Sect. 4347; adultery; indictment lies against unmarried person alone on complaint of husband or wife of co-actor; *State v. Wilson*, 22-306.
- Sect. 4352, venue of offense of keeping a house of prostitution is sufficiently laid if laid within the county where the indictment is found; *State v. Shaw*, 35-578.
- Sect. 4363, keeping a house where games are played for use of the table or instruments of gaming and for beer, oysters, etc.; offense under section; *State v. Bishel*, 39-43.
- Sect. 4366; wager upon result of presidential election in sister state; absolutely void; *Shaw v. Gardner*, 30-113.
- Sect. 4392, to obtain indorsement or credit on a note; not false pretence within the statute; *State v. Moore*, 15-412. (c).
- (c.) *People v. Stone*, 9 Wend., 132; *People v. Johnson*, 12 Johns., 232; *People v. Babcock*, 7 Johns., 201, dist'd; *Moore v. Comm.*, 3 Barr., 260; *State v. Barrows*, 11 Ired., 477; *Rex v. Wavell* 1 Moody, 224, in support,
- Sect. 4394, use of false tokens affecting the public, not essential to conviction for false pretenses; *State v. Reidel*, 26-435.
- Sect. 4408, act in the exercise of avowed legal right, without fraud or malice, will not prove a conspiracy to injure property of another; *State v. Flynn*, 28-26.
- Sect. 4408, conspiracy; indictment must show the object criminal or allege facts showing means to accomplish the act where criminal; *State v. Potter*, 28-550; *State v. Stevens*, 30-303.
- Sect. 4408, indictment for conspiracy to defeat justice, must specifically state the means employed; "by means of money," etc., not sufficient; *State v. Potter*, 28-557; *State v. Stevens*, 30-306.
- Sect. 4409; nuisances, annoyances resulting from the erection and maintenance of a nuisance the gist of the offense; *State v. Kaster*, 35-223.
- Sect. 4409; keeping cattle and hogs in inclosure, occasioning noxious exhalations and

- offensive smells, corrupting the air, dangerous to health, comfort, etc.; indictable nuisance; *State v. Kaster*, **35-223**.
- Sect. 4409; mill dam lawfully erected across non navigable stream, by management or erection becoming prejudicial to health, comfort, etc.; an indictable nuisance; *State v. Close*, **35-571**.
- Sect. 4411; disorderly house; to convict, the disorder may be outside, in front, the character of the house attracting disorderly persons; *State v. Webb*, **25-236 (d.)**; see code 1873, § 4091, *infra*.
- (*d.*) *Cable v. State*, 8 Black., 531.
- Sect. 4441; nuisance; indictment, keeping "a house of ill fame for the purpose of prostitution and lewdness, to the disturbance of others"; sufficient; *State v. Alderman*, **40-375**.
- Sect. 4442-3, does not change the common law rule, as to self defence; *State v. Kennedy*, **20-573**.
- Sect. 4505; stealing in another state and bringing into this; not commencing an offense in one state and consummating in this; *State v. Bennett*, **14-480**.
- Sect. 4507; see § 4221, *ante*.
- Sect. 4539; bail bond taken by magistrate, on charge of felony, not of county where warrant issued; inoperative as statutory bond; *State v. Cannon*, **34-324**.
- Sect. 4609, grand jury reduced in number below fifteen, for any cause; duty of court to cause sufficient persons summoned by sheriff, from body of county, to fill panel; *State v. Garhart*, **35-310**.
- Sect. 4651; indictment in form prescribed by the section, sufficiently alleges venue; *State v. Winstrand*, **37-113**.
- Sect. 4656, stealing from person; property should be charged as of him who had it in possession; proof it his and brothers, as co-partners; after verdict; variance immaterial; *State v. Cunningham*, **21-434**.
- Sect. 4657, 4659-60; indictment need not specifically charge defendant "murdered"; equivalent allegation suffices; *State v. O'Niel*, **23-274**.
- Sect. 4660; indictment without formal conclusion not vitiated; *State v. Schilling*, **14-458**.
- Sect. 4668; distinction between accessory before the fact and principal abolished; *State v. Brown*, **25-564**.
- Sect. 4717; plea of guilty in criminal case may be withdrawn any time before judgment and plea, "not guilty," pleaded; *State v. Oehlshlager*, **38-298**.
- Sect. 4723 et seq., defendant in criminal case objecting can not be put on trial at indictment term unless he was previously held to answer and, when indictment found, was in custody or on bail; *State v. Harris*, **33-357**; *State v. Lehane*, **34-594**.
- Sect. 4727 et seq., as to discretion as to change of venue, does not apply to civil causes; only to criminal cases; *Miller v. Laraway*, **31-539**.
- Sect. 4729, affidavit in the very language of the section; supreme court will not interfere as to change of venue unless discretion abused; *State v. Arnold*, **12-483**.
- Sect. 4733; as to change of venue construed as Code, 1851, § 3272; *State v. Arnold*, **12-479**; *State v. Ingalls*, **17-11**.
- Sect. 4733; supreme court will not interfere, as to change of venue save for improper exercise of discretion; *State v. Ingalls*, **17-11**; *State v. Freeman*, **27-335**.
- Sect. 4762; not a good challenge to panel of jury that members heard evidence submitted to court as to sanity; *State v. Arnold*, **12-434**.
- Sect. 4771; juror only incompetent, on challenge, when he sat on the trial of one joint defendant, on trial severed; *State v. Sheeley*, **15-406**; *State v. Leicht*, **17-29**.
- Sect. 4779, 4780; state must complete or waive her peremptory challenges before defendant is required to challenge; *State v. Bowers*, **17-49**.
- Sect. 4785-6, examination of witness indorsed on indictment; not restricted to testimony before grand jury; *State v. Bowers*, **17-50**.

- Sect. 4786, does not prohibit examination of a witness whose evidence is minuted and returned with indictment, but, not attached; *State v. Postlewait*, 14-448; *State v. Schilling*, 14-459.
- Sect. 4786; service of name of witness not indorsed on indictment on defendant personally; good; *State v. Ostrander*, 18-453.
- Sect. 4789; parties jointly indicted; severance for trial on motion of state; *State v. Marvin*, 22-301.
- Sect. 4806, confession out of court will not convict, corpus delicti not otherwise proved; *State v. Turner*, 19-147.
- Sect. 4813; court may instruct as to who holds legal right to land, from deeds in evidence; *State v. Delong*, 12-455.
- Sect. 4813-4; object in requiring instructions signed is to make them part of record; *State v. M'Combs*, 13-428.
- Sect. 4835; words "if punishable by indictment," relate only to first preceding clause "of an attempt to commit the offense;" *State v. Jarvis*, 21-46.
- Sect. 4862, sentence on verdict; "clear days" are days exclusive of day of verdict and day of judgment; *State v. Marvin*, 12-502; *State v. Wood*, 17-22.
- Sect. 4870, arraignment for sentence; declaratory of the common law; presumed complied with in silence of record; *State v. Wood*, 17-22.
- Sect. 4881; see § 1562, ante.
- Sect. 4929; penalty in criminal case reduced in supreme court, only when disproportioned to degree of guilt shown by proof; *State v. Freeman*, 27-337.
- Sect. 4968; principal need not sign bail bond; *State v. Patterson*, 23-576.
- Sect. 4968; on approval of bail bond, failure to mark it accepted will not vitiate it; *State v. Emily*, 24-25.
- Sect. 4994; supreme court will not meddle with discretion to remit etc., forfeiture of bail bond, on surrender etc. of principal, save for abuse; *State v. Scott*, 20-66; see *State v. Hirronemus*, 50-548.
- Sect. 5005; poor convict must suffer actual imprisonment of thirty days before release, as insolvent; *Curley, ex p.*, 34-180.
- Sect. 5005; judgment for fine satisfied by compliance with statute by note to county treasurer and schedule; *State v. Van Vleet*, 23-169; *State v. Peck*, 37-343; *State v. Jordan*, 39-390.
- Sect. 5015-9; inquiry as to the mental condition of a prisoner does not relate to the time act was committed; *State v. Arnold*, 12-483.
- Sect. 5015-9; inquiry as to mental incapacity is limited to time of appearance for arraignment etc., in court; *State v. Arnold*, 12-483.
- Sect. 5048, 5054; do not effect or limit the competency of testimony; *State v. Mullen*, 30-264.
- Sect. 5058; act or omission charged in information with venue, names and dates to be as precise as in indictment; *State v. Bitman*, 13-487.
- Sect. 5086, district court may impose costs on prosecuting witness for malice etc., on appeal in criminal case; *Trenchard, in re.*, 16-55.
- Sect. 5094; criminal case before J. P.; state or defendant may appeal; *State v. Tait*, 22-141.
- Sect. 5094; right in state to appeal criminal case from J. P., does not violate constitution, 1857, art. 1, § 11; *State v. Tait*, 22-143.
- Sect. 5094; costs of criminal prosecution, adjudged against prosecuting witness by J. P.; appeal lies to district court in the name of the state; *State v. Roney*, 37-32.
- Sect. 5094, so much of the section as gives a re-trial on state's appeal, of offender acquitted by J. P. having jurisdiction, void; *State v. Van Horton*, 26-404. (c.)
- (c.) *State v. Reynolds*, 2 Hayw. (Tenn.), 110; *People v. Corning*, 2 Comst., 9; *Cowan v. Cummings*, 3 Cush., 212.
- Sect. 5095; notice provided for to J. P., rendering judgment, essential to jurisdiction of district court, on appeal in criminal case; *State v. Leyden*, 13-434.

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Chap. 37; lands granted to Cedar Rapids etc. Co. not taxable, before certification, until road built from Lyons to Clinton and line west from Marion, which lies east of Cedar Rapids in Linn co.; *Goodrich v. Beaman*, 37-564.

Chap. 43; as to foreclosure of mortgage, extends time to answer, nine months after first service; but, in no event after January 1, 1861: *Sweet v. Porter*, 12-338.

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(*f.*) *First Nat. B'k v. Portsmouth*, 47 N. H.; *Gordon v. Appeal Tax Court*, 3 How., 135; *Smith v. Bailey*, 9 N. H., 423.

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Chap. 24, advertisement of 100 acres of land in gross for tax sale, property of unknown owner, assessed in parcels; not defective; *Henderson v. Oliver*, 32-513.

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(*r.*) *Rex v. Loxdale*, 1 Burr., 455; *Marchant v. Langworthy*, 6 Hill, 646; *Gale v. Mead*, 2 Den. 160; *People v. Allen*, 6 Wend., 487; *Hooker v. Young*, 5 Cow., 269; *People v. Lunkle*, 9 Johns., 147; *Pond v. Negus*, 3 Mass., 230; *Williams v. Sch. Dist.*, 21 Pick., 75; *Lowell v. Hadley*, 8 Met., 180; *People v. M'Ginlev*, 4 Ind., 7; *Colt v. Eves*, 12 Conn., 243; *Savage v. Walsh*, 26 Ala., 620; *Torrey v. Milbury*, 21 Pick., 67; *State v. Lear*, 9 Wis., 292; *Torrey v. Hughes*, 26 N. Y., 514; *Williamson v. Kent*, 14 Ind., 306.

Chap. 24, § 4, realty once duly advertised for sale for tax; salable at any time by regular adjournment without other notice; *Hurley v. Street*, 29-433.

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Chap. 28; to require proof of genuineness of signature, denial must be of him whose signature it purports to be; *Walker v. Sleight*, 30-323; *Loomis v. Metcalf*, 30-384; *Robinson v. Lair*, 32-11,

Chap. 28; proof of signature; under plea non est factum, defendant made show he did not sign a note; ex. gr., that it was altered from receipt etc.; *Lake v. Cruikshank*, 31-306.

Chap. 28; non obstante this statute, a party may disprove the signature to a writing, as a fact, without denial under oath; *Sankey v. Trump*, 35-267.

Chap. 32, authorizing a conveyance of certain county lands, by resolution of board of supervisors, applies only to those therein specified; *Tama Co. v. Melendy*, 55-400.

Chap. 34; driving away stock; to recover, knowledge of defendant must be alleged and proved; *Chamberlain v. Gage*, 20-304.

Chap. 41; to establish a court at M'Gregor; void; *M'Gregor v. Baylies*, 19-47.

Chap. 47; wine is, within the act, an intoxicating liquor; onus on defendant to show it was manufactured from fruit grown within the state; *Worley v. Spurgeon*, 38-467.

Chap. 47; action for damages by wife for sale of intoxicating liquor to husband; his prior habits competent evidence; *Dunlavy v. Watson*, 38-390.

Chap. 47; damages for sale of liquor to husband; whoever actually makes a sale, owner, son, clerk, or servant of owner, is personally liable for injurious consequences resulting; *Worley v. Spurgeon*, 38-466.

Chap. 47, § 3; prohibitory liquor law; provision that judgment rendered for viola-

- lation of act shall be a lien on property, of a third person, occupied and used with his knowledge and consent for unlawful sale or manufacture of intoxicants; not unconstitutional; *Polk Co. v. Hierb*, **37-364**.
- Chap. 49; a new vote is not the exclusive remedy to settle controversy as to re-location of county seat; *Sweatt v. Faville*, **23-327**.
- Chap. 53, one setting out fire between Sept. 1, and May 1, is absolutely liable for damages done to premises of another; *Conn v. May*, **30-242**.
- Chap. 53 and Rev. 1860, § 4231; setting fire in cultivated field not within statute, not make liable for all resulting damage, regardless of care or negligence; *Brunell v. Hopkins*, **42-431**.
- Chap. 54; vacated all civil offices, as to incumbents, at the time it took effect, also holding military office; *Bryan v. Cattell*, **15-553**.
- Chap. 54, § 3, amending charter of Dubuque does not provide for review, in a matter of taking for streets; *Ragatz v. Dubuque*, **4-434**.
- Chap. 72; the several sub-districts of a school district township being organized into independent districts, the district township ceased to exist and can not maintain an action to enforce equitable division of assets; but the independent districts entitled must enforce their rights in their own names; *Dist. Towns. v. Indep. Dist.*, **30-224**.
- Chap. 77; see Rev., 1860, § 986, ante.
- Chap. 78; on vacation of town plat, or part thereof, title to streets, alleys, and public grounds, vests in owners of adjoining lots; *Day v. Schroeder*, **46-549**.
- Chap. 79, vacation of city plat or addition, does not impair the liability of the property for its share of existing debts, incurred by city; *Deeds v. Sanborn*, **26-421**.
- Chap. 93; suit against county; limited to actions after act in force; *Mather v. Butler Co.*, **16-61**.
- Chap. 97; applicable only to auctioneers and transient merchants; *Oskaloosa v. Tullis*, **25-444**.
- Chap. 97; city of second class has no power to require a resident retail merchant to pay auction tax on goods he sells through an auctioneer; *Oskaloosa v. Tullis*, **25-444**.
- Chap. 97; authority to regulate and license auction sales etc. and to pass all ordinances necessary; ordinance, adopted by town etc., authorizing mayor to fix license fee within specified limits; valid; *Decorah v. Dunstan*, **38-99**.
- Chap. 109; continuance of causes of soldiers; liberally construed; *Lucas v. Casady*, **12-567**; *M'Cormick v. Rusch*, **15-140**.
- Chap. 109; soldier entitled to continuance without showing his presence necessary; *Butler v. M'Call*, **15-432**.
- Chap. 110, does not exempt vendor from personal liability for tax on land, conveyed prior to Nov. 1; *Shaw v. Orr*, **30-360**.
- Chap. 111, does not extend time to bring action to enforce mechanic's lien; action must be commenced within nine months from ninety days from material furnished, or labor performed; *Gilcrest v. Gottschalk*, **39-314**; *Squier v. Parks*, **56-409**.
- Chap. 111, amending Rev., 1860, § 1851; statement filed with clerk for mechanic's lien limits recovery only as to purchasers and incumbrancers; *Neilson v. R. R. Co.*, **51-187**.
- Chap. 111, amending Rev., 1860, § 1851, as to mechanic's lien; where the owner, who incurred the debt, dies before lien filed it suffices, as against the heirs, to file the lien against the estate of the deceased owner; *Welch v. M'Grath*, **59-524**.
- Chap. 113; exempting property of volunteers from sale under trust deed, mortgage or execution, does not apply to trust deed made prior to April, 1861; *Steffenbell v. Gifford*, **23-517**.
- Chap. 113; exempting property of volunteers in U. S. service does not apply to levy of attachment; *Hannahs v. Felt*, **15-142**; *Ryan v. Wessels*, **15-145**.
- Chap. 113 and Chap. 11, Spec. Sess.; one in the naval service is not in the "actual

military service," for release of property from attachment; *Abrahams v. Bartlett*, 18-513.

Chap. 113, and extra session, ch. 11; not exempt property of volunteer soldier in service of U. S., from taxation; *Slane v. M'Carroll*, 40-62.

Chap. 148; county can not buy, for use of school fund, outstanding tax title to defeat mortgage lien, held by third party, prior to mortgage held in favor of the fund; *Miller v. Gregg*, 26-76.

Chap. 151, § 1; dower of widow not abolished, but enlarged, by section; *Kendall v. Kendall*, 42-466.

Chap. 151; foreclosure of mortgage by notice and sale, under Code, 1851, ch. 118; "judicial sale," within the act; *Sturdevant v. Norris*, 30-71.

Chap. 152; dower interest; an estate in fee; *M'Cormick v. Blossom*, 40-258.

Chap. 160; county has no authority to employ an agent, to attend federal departments, to secure allowance or claims for swamp land; *Baker v. Wash. Co.*, 26-152.

Chap. 160; business at federal departments, as to swamp lands, to be transacted by state agents alone; *Baker v. Wash. Co.*, 26-152.

Chap. 162, repealed ch. 152, 1852, except for assessment, equalization and levy of tax; *Homestead Co. v. Webster Co.*, 21-225.

Chap. 169 § 2; the word "wilfully," as used, does not intend malice; designed omission to perform acts required fixes liability; jury find if by design, mistake or inadvertence; *Fuller v. R. R. Co.*, 31-204.

Chap. 169, § 2; prescribing a penalty for railroad company not fixing and posting rates of fare and freight and for over charging does not deprive one from whom overcharge collected of the right to recover back excess; may recover it as well as penalty; *Fuller v. R. R. Co.*, 31-202; *Fuller v. R. R. Co.*; 31-214.

Chap. 169, § 2; prescribing penalty for railroad company not posting rates of fare and freight and over charging, is not unconstitutional, as intermeddling with interstate commerce; police regulation of state; *Fuller v. R. R. Co.*, 31-207; *Fuller v. R. R. Co.*, 31-215. (*h.*)

(*A.*) *Gibbons v. Orden*, 9 Wheat., 189; *Passenger Cas.*, 7 How., 276; *Brown v. M'd.*, 12 Wheat., 419; *Mayor etc. v. M.*, 11 Pet., 102.

Chap. 169, § 2, to recover excessive charges for freightage by railroad company; plaintiff, not bound to show wilful overcharge; *Fuller v. R. R. Co.*, 31-214.

Chap. 169, § 3; railroad company required to construct cattle guards, where road passes through fences, as well those dividing lands of the same owner as those forming boundaries between owners; *Smith v. R. R. Co.*, 38-520.

Chap. 169, §§ 3, 4; does not require cattle guards at private crossings of railroads; *Bartlett v. R. R. Co.*, 20-192.

Chap. 169, § 3; railroad company not liable for not putting in cattle guards at private crossings; *Bartlett v. R. R. Co.*, 20-192.

Chap. 169, § 6; double damages for killing stock by railroad company; valid; *Jones v. R. R. Co.*, 16-8; *Welsh v. R. R. Co.*, 52-633.

Chap. 169, § 6; imposing double damages for killing stock, at points where railroad companies have a right to fence and fail so to do; not in violation of amend. 14, const., U. S.; *Tredway v. S. C. & St. P. R. R. Co.*, 43-527.

Chap. 169, § 6 (Code, 1873, § 1289); providing for double damages for stock killed; not penal; *Koons v. Ry. Co.*, 23-496 (*i.*); *Mackie v. Cent. R. R.* 54-542.

(*i.*) *Corning v. M'Cullough*, 1 Comst. 66, overruling *Van Hook v. Whitlock*, 26 Wend., 51 and *Freeland v. M'Cullough*; see *Merch. B'k. v. Bliss*, 13 Abb. Pr., 225; *S. C.*, 21 How., 365.

Chap. 169, § 6; railroad is not fenced unless fences be upon both sides of track; *Tredway v. S. C. v. St. P. R. R. Co.*, 43-520.

Chap. 169, § 6; absolute liability of railroad company for stock killed where it may fence, applies only where it is fit and suitable to fence; *Davis v. R. R. Co.*, 26-551.

Chap. 169, § 6; railroad company is absolutely liable for stock killed at a point where it

- may, but does not, fence, unless the injury is caused by the wilful act of owner; *Stewart v. R. R. Co.*, 32-562; *Fritz v. R. R. Co.*, 34-338.
- Chap. 169, § 6; two railroads operating trains on one road and it unfenced; each company liable only for stock injured or killed by its own trains; *Stephens v. D. & St. P. R. Co.*, 36-328.
- Chap. 169, § 6; lessee of railroad operating road not liable for stock injured where there is a right to fence; *Liddle v. R. R. Co.*, 23-379.
- Chap. 169, § 6; two railroad companies operating one track; each liable for stock killed by its own train; *Clary v. R'y. Co.*, 37-346; non obstante lessee company operates on time table etc., fixed by lessor company. *Ib.*
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- (*J.*) *N. A. & S. Co. v. Pace*, 13 Ind., 411; *R. R. Co. v. Kinney*, 8 Ind., 402; *R. R. Co. v. Shriner*, 6 Ind., 141; *R. R. Co. v. Destel*, 20 Ind., 231; *R. R. Co. v. Griffin*, 31 Ill., 303; *Hurd v. R. R. Co.*, 25 Verm., 116; *R. R. Co. v. Guard*, 24 Ind., 222; *R. R. Co. v. M'Kinnie*, 24 Ind., 283.
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- Chap. 169, § 6; action before J. P. for double damages, by killing stock by railroad; notice and affidavit of loss evidence without being pleaded; *Brandt v. R. R. Co.*, 26-115.
- Chap. 169, § 6; service of notice etc. of loss by killing stock proved by return of deputy sheriff indorsed and verified; *Brandt v. R. R. Co.*, 26-116.
- Chap. 169, § 6; cattle on railroad track without owner's neglect; liability if reasonable and proper care not used to avoid injury; *Balcom v. R. R. Co.*, 21-103; *Whitbeck v. R. R. Co.*, 21-104. (*k.*)
- (*k.*) *Beers v. Housatonic Co.*, 19 Conn., 566; *Kerwhacker v. R. R. Co.*, 3 Oh., 172; *Kerwhacker v. Elliott*, 4 Oh., 474.
- Chap. 169, § 6; railroad company liable for stock killed, on track not sufficiently fenced, that have escaped from inclosure of adjoining owner; *Hinman v. R. R. Co.*, 28-492; *Swift v. R. R. Co.*, 29-244; *Fritz v. M. & St. P. R. R. Co.*, 34-337; *Tredway v. S. C. & St. P. R. R. Co.*, 43-529.
- Chap. 169, § 6; railroad company liable for swine killed on track where company may, but neglects to, fence, in counties where swine are restrained, unless the injury be shown to be the result of wilful act of owner; *Spence v. R'y. Co.*, 25-140 (*L.*); *Stewart v. R. R. Co.*, 27-284; *Fritz v. R. R. Co.*, 34-338.
- (*L.*) See *Corwin v. R. R. Co.*, 19 N. Y., 42, followed in *Shepherd v. R. R. Co.*, 34 N. Y., 641; *Bradley v. R. R. Co.*, 34 N. Y., 427.
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- traveled by public, though outside lines established by authorities; *Soward v. R. R. Co.*, **32-387**.
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- Chap. 172, § 84; 1866, chap. 143; in erecting an independent school district in a city, etc., contiguous territory may embrace territory in adjacent township; *Sch. Dist. v. Super's*, **25-307**.
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- Chap. 86, § 8; authority to grant injunctions, given to judge of circuit court, does not extend to the court; *Cummings v. Des M., W. & S. W. R'y Co.*, 36-174.
- Chap. 86, §§ 17, 18; judgment rendered prior to statute in force, appealable direct to supreme court within one year; *Simberskey v. Smith*, 27-179.
- Chap. 86, §§ 17, 18; judgments rendered after Jan. 4, 1869 appealable, to general term, within three months only; *Simberskey v. Smith*, 27-179.
- Chap. 86, appeals; affirmance by consent, by general term, with view to appeal to supreme court not proper; *Roads v. Garman*, 27-339.
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- Chap. 111, conferring power to sell for tax not invalid; it affecting equally all cities in that predicament; *Haskel v. Burlington*, 30-233; *Tackaberry v. Keokuk*, 32-157.
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- Chap. 124, § 4, lands granted to Iowa Falls etc. R. R. Co.; not taxable until year following issue of patent; *Ia. Falls etc. Co. v. Cherokee Co.*, 37-484.
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(*) *Nat. Bk. v. Comm.*, 9 Wall., 353, dist.

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Chap. 154, § 2; authorizing towns and cities to regulate etc. sale of intoxicating liquors; not prohibited by state law, nor in conflict with prior law, declaring certain sales lawful; later expression of legislative will; *State v. King*, 37-466.

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- constitutional; *State v. Weir*, 33-136; *State v. Metcalf*, 33-610; *Cooley v. Davis*, 34-130.
- Chap. 87; school district may bind itself by bond; *Curry v. Dist. T.*, 62-104.
- Chap. 89, repeals, by implication, Rev., 1860, § 739; supervisors have no authority to increase assessment of property and tax levied, on such increased valuation, illegal; *Rood v. Supervisors*, 39-445.
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- Chap. 102, requiring the trustees' certificate to recite a compliance, in all respects, with statute before a railroad company is entitled to railroad aid tax, is complied with by a statement that the company has so complied with the act as to be entitled to the tax; *Casady v. Lowry*, 49-528.
- Chap. 102; railroad aid tax; if the certificate of clerks of election be reasonably susceptible of a construction showing compliance with statute, such construction will be given it, notwithstanding some defect of form; *Casady v. Lowry*, 49-526.
- Chap. 102; a railroad, constructed of narrow gauge, may collect railroad aid tax unless shown to be unable to do the business of the country through which it passes; *Casady v. Lowry*, 49-530.
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- Chap. 107, § 3; see Rev., 1860, §§ 2723-4, ante.
- Chap. 109, § 45; confers the only power vested in supervisors to levy tax for support of insane and gives no authority to levy a special tax therefor; county chargeable with maintenance, the required amount to be added to next levy of state tax; *Land Co. v. Carroll Co.*, 39-157.
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- Chap. 153, § 2; does not repeal Stat., 1868, chap. 86, § 4; give concurrent jurisdiction to circuit and district courts in appeals, ad quod damnum; *Davey v. R. R. Co.*, 31-553; *Ottumwa v. Derks*, 32-508.
- Chap. 153, circuit court has exclusive jurisdiction of all appeals, from inferior tribunals, in civil cases; *M'Kinney v. Wood*, 35-168.
- Chap. 153, the circuit court has exclusive jurisdiction of appeals from special tribunals organized for contesting elections, under Rev., 1860, ch. 37; *M'Kinney v. Wood*, 35-168.
- Chap. 158, § 10; administrator's admission of claim against estate will not preclude investigation and disallowance by court; *Karr v. Stivers*, 34-125.
- Chap. 158, §§ 19, 20; filing petition in circuit court, not verified, within time limited, sufficiently complies with statute; *M'Crary v. Deming*, 38-531.
- Chap. 160, § 2; legalizing acknowledgments of deeds theretofore executed, has no application to tax deeds; *Goodykoontz v. Olsen*, 54-176.

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- Chap. 167, § 3; see Rev., 1860, §§ 2723-4, ante.
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- Chap. 167, § 10; cause of action arising in Iowa; limitations of place of prior residence not bar action in Iowa; *Lloyd v. Perry*, 32-145.
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- Chap. 167, § 11; see ch. 126, ante.
- Chap. 167, § 13; in a civil cause, on compliance with the section a change of venue is a right; *Miller v. Laraway*, 31-539.
- Chap. 167, § 13; in civil cases it is generally error to refuse a change of venue, when applicant brings himself within the statute; *Jones v. Chi. & N. W. Ry. Co.*, 36-70.
- Chap. 167, §§ 17, 20, defendant in foreclosure may claim sixty days, from service complete, to answer; statute not change the rule; *Foot v. Beckwell*, 34-492.
- Chap. 167, § 35, repealed § 2742, Rev., 1860, excepting from the statute of limitations, if the answer or testimony of defendant shows a justly subsisting cause of action; *Springer v. Clay Co.*, 35-242.
- Chap. 167, § 35; see Rev., 1860, § 2775, ante.
- Chap. 169; payment by railroad company of tax of one per cent. on gross earnings, not relieve from municipal tax on property within city limits; *Bridge Co. v. Dubuque*, 32-420; *Davenport v. R. R. Co.*, 38-639.
- Chap. 172, amending Rev., 1860, §§ 1152, 1156; filing articles of incorporation in office of secretary of state not essential to validity of incorporation. Failure to file not make stockholders individually liable; *Nat. Bk. v. Davies*, 43-435.
- Chap. 187, lands granted as indemnity for swamp land of one county situated in another, taxable for year 1870; *Guthrie Co. v. Carroll Co.*, 34-107.
- Chap. 192, creating county of Crocker, invalid; *Garfield v. Brayton*, 32-19.

STATUTES, 1872.

- Chap. 45; see Code, 1873, § 466, post.
- Chap. 2, 50; duty of township trustees to certify compliance with law entitling railroad company to aid voted. Trustees' discretion limited to facts, that the road has been built and that the order of the president of the corporation was accompanied by necessary estimates; *Harwood v. Quinby*, 44-393.
- Chap. 9, § 2, authorized the clerk of circuit court to enter judgment by confession; *Grattan v. Matteson*, 54-232.
- Chap. 11, amending stat., 1866, ch. 118; publication of statutes; proprietor of newspaper has no such interest as that he can, by action in his own name, compel supervisors to order publication of statutes and the proceedings of the board in his newspaper; *Welch v. Supervisors*, 23-199; *Smith v. Yoram*, 37-91.
- Chap. 26, for assessment and taxation of the property of railroad companies; not in conflict with § 2, art. 8 of constitution; *Dubuque v. R. R. Cos.*, 47-197; *R. R. Co. v. Davenport*, 51-456.
- Chap. 26; "railroad corporations"; the term is descriptive of the property; the act applies to individuals; partnerships or companies; *Dubuque v. R. R. Cos.*, 47-201.
- Chap. 26; road tax of 1872 collectible from railroad company, non obstante impossibility of compliance with statute provisions, as to extension on tax list; *Milw. etc. Co. v. Kossuth Co.*, 41-63.
- Chap. 26, § 9, releasing property of railroad companies from payment of municipal

- taxes; unconstitutional and void; *Davenport v. R. R. Co.*, 38-642; *Dubuque v. R. R. Co.*, 39-68; *Land Co. v. Woodbury Co.*, 39-177.
- Chap. 26, § 9, releasing railroad companies from the payment of tax already levied, impairs obligation of valid contract and is void; *Dubuque v. R. R. Co.*, 39-61; *Burlington v. R. R. Co.*, 41-141.
- Chap. 26, § 13, does not take away right to collect, from railroad companies, city taxes, since the only section in conflict is unconstitutional; *Davenport v. R. R. Co.*, 38-647; *Land Co. v. Woodbury Co.*, 39-177.
- Chap. 43; the warden of the additional penitentiary, at Anamosa, is not required to execute a bond, that given by the warden at Fort Madison, being required before he enters upon his office and not as an official duty; *State v. Heisey*, 56-405.
- Chap. 45, as to improvement of streets and alleys; does not repeal §§ 1068-9, Rev. 1860, providing mode for collection of assessments for such improvements; *Riadon v. Shank*, 37-82.
- Chap. 45; see Rev., 1860, § 1068-9, ante.
- Chap. 49; does not validate school orders, drawn on district treasury, subsequent to act in force; *Nat. St. B'k v. Ind. Dist.*, 39-496.
- Chap. 49, § 51; parol contract of directors with teacher, for nine months, not complying with statute; satisfied by acceptance of part performance (7 months) and binding on district; *Cook v. Ind. Sch. Dist.*, 40-445.
- Chap. 63, contract to furnish lumber to another, he to transport and sell, dividing profits; not conditional sale within the statute; *Crooker v. Brown*, 40-146.
- Chap. 78, empowering cities to construct, or procure the construction of, water works and to maintain them, is of general application; it empowers cities organized under special charter or general law; *Grant v. Davenport*, 36-404.
- Chap. 87, legalizing certain taxes to pay judgment, levied by certain municipal corporations and authorizing collection; a general statute and not unconstitutional; *Land Co. v. Soper*, 39-115.
- Chap. 87, authorizes municipal corporations against whom a judgment is rendered, irrespective of population or the character of the indebtedness on which the judgment is based, to issue bonds in payment, if the creditor so elects and parties agree as to character of bond; *Land Co. v. Carroll Co.*, 39-157.
- Chap. 87; bonds issued by counties under this statute are payable as provided in Code 1873, tit. IV. ch. 1; duty of board of supervisors to levy bond tax for their payment and such tax is not limited to three mills (Code, § 840); *R. R. Co. v. Osceola Co.*, 52-29.
- Chap. 95, act providing the place of bringing suits in certain cases; not invalid as to title; *Farmers Ins. Co. v. Highsmith*, 44-335.
- Chap. 95; service of original notice on an agent to solicit insurance risks, who resides in the county, is good service on insurance company; *Farmers Ins. Co. v. Highsmith*, 44-344.

CODE, 1873.

- Code, 1873, in force Sept. 1, 1873; *Jewett v. Wanshura*, 43-575.
- Sect. 45, subd. 23; requiring that, in the computation of time, Sunday shall be excluded; applies only when some act is to be done on the last day, it being Sunday; *Conklin v. Marshalltown*, 66-123.
- Sect. 45, as to construction of statutes; a person of unsound mind may be legally insane and a guardian, for him, be appointed; *Seerly v. Sater*, 68-376.
- Sect. 47, repealed all public statutes passed prior to the enactment of the Code, which were not re-enacted; *Staples v. Plymouth Co.*, 62-367.
- Sect. 50, all actions, before Code in force, to be conformed to its provisions, so far as consistent with substantial rights of parties; *Wadsworth v. Wadsworth*, 40-449.
- Sect. 162; does not permit appeals in cases where there is no statute authorizing them; *M'Keever v. Jenks*, 59-351.

- Sect. 162; change of venue of appeal from J. P., in circuit court, must be to a circuit court of another county, not to district court; *Schuchart v. Lammey*, 62-199.
- Sect. 162, confers on circuit court exclusive jurisdiction in certiorari, in civil matters; *Keniston v. Hewitt*, 48-680.
- Sect. 167; judge may, when business demands, extend term of court in one county three days beyond time for term to commence in another county, the clerk in the latter county adjourning court from day to day; *Cook v. Smith*, 54-639.
- Sect. 167-9; a telegram from judge to clerk, ordering adjournment, is a written order within the statute, adjournment of court valid; *State v. Holmes*, 56-589.
- Sect. 169, if there was no formal adjournment of the term by the clerk, or proclamation upon the order of the judge, one may not complain unless he shows prejudice; notice in writing to jurors, witnesses and suitors, and by publication justify record entry, *nunc pro tunc*; *State v. M'Guire*, 53-166.
- Sect. 169, does not fix a day for the ending of a term of court; it authorizes a judge, however, for good cause, to adjourn a term not yet begun; *State v. Stevens*, 67-559.
- Sect. 173; merely directory; immaterial whether the record read and approved during term; *Finch v. Hollinger*, 47-178.
- Sect. 175; judges, by interchange, holding each other's courts; each judge (even in vacation) may certify the evidence in cases tried before him; *Howe v. Jones*, 66-161.
- Sect. 176, 178; a decree prepared by counsel, signed by the judge, and recorded by the clerk is not the signing of the record required by the section; it may be amended or expunged at any time, before the record proper is signed; *Bosch v. Kassing*, 64-314.
- Sect. 178; erroneous decision entered; right and duty of the court, *sponte sua*, to correct the error, if discovered, during the term or before record signed; *Wolmerstadt v. Jacobs*, 61-373.
- Sect. 178; the power of a court to expunge an entry, or change the record, does not exist unless the court had jurisdiction of the defendant, at the time the record was made; *Ins. Co. v. Duffie*, 67-177.
- Sect. 178; there is no power in a court to correct its record, after the term and before it is signed, unless it clearly and beyond cavil appears that the correction should be made; *State v. Crosby*, 67-353.
- Sect. 180; district and circuit courts may, by rule, require defendants (when notified) to appear and plead by noon of the first day of term; non obstante § 2599; *M'Grew v. Downs*, 67-688.
- Sect. 183; a motion in arrest and for judgment, non obstante the verdict, can not be filed and considered in vacation, save by agreement of parties; *Scribner v. Rutherford*, 65-553.
- Sect. 185-6; competent for the judge to receive verdict after opening court in another county; *Tilton v. Swift*, 40-81.
- Sect. 185-6; authorizing verdict received and judgment rendered after time to hold court in another county; not invalid, as being retrospective; *Tilton v. Swift*, 40-79.
- Sect. 192, 2313-4; circuit court, as a court of probate, may be held at such places as the judge may appoint; *Casey v. Stewart*, 60-164.
- Sect. 193, notice of appeal served on clerk of court becomes one of the original papers in the cause and is a part of the record; *Brier v. Chi., B. & P. R'y Co.*, 66-604.
- Sect. 197; non obstante this section, an entry made by the sheriff, in the incumbrance book of the attachment of certain lands, is notice to subsequent purchasers, though the entry be not indexed; *Blodgett v. Huiscamp*, 64-550.
- Sect. 197, cl. 1: judgment not entered on record book of court, invalid; *Case v. Plato*, 54-66.
- Sect. 197, 2747, cl. 7, contemplate an "appearance docket," which is made part of

- court records; not a bar docket, printed for information of members of the bar; *Gifford v. Cole*, 57-273.
- Sect. 200, does not require that a bill of exceptions shall be minuted upon appearance docket before filing; *Royer v. Foster*, 62-325.
- Sect. 200; omission of clerk to note date on appearance docket; action dismissed on motion; *Nickson v. Blair*, 59-532.
- Sect. 205, 3459, the notice of hearing in habeas corpus not being given to the district attorney, the court nor judge thereof can not so appoint another member of the bar to act as to give a right to demand pay, for services, from the county; *Miller v. Buena Vista Co.*, 68-712.
- Sect. 212; an attorney who pleads guilty of making false statements to his client, to deceive him and retain his money, it is the duty of a court to disbar; *Slemmer v. Wright*, 54-167.
- Sect. 213, precludes the supreme court's finding, from affidavits alone, that appellant's abstract of evidence was assented to by appellee; *Preston v. Hale*, 65-410.
- Sect. 213; record of agreement by attorneys, made after agreement disputed, wholly on strength of testimony, constitutes no stronger evidence than the testimony itself; not conclusive on party objecting; *Hiller v. Landis*, 44-225.
- Sect. 215, subd. 3; right to lien on money due attorney's client is not confined to actions on contract; it exists in all actions where there is a money liability from the adverse party to his client; *Smith v. R. R. Co.*, 56-723.
- Sect. 227, 4397, defendant in criminal case knowing, when jury sworn, that any juror is not qualified, waives his right to object; *State v. Kaufman*, 51-578; see *State v. Groome*, 10-308.
- Sect. 232; as to filling exhausted panel of jurors; directory; *State v. Harris*, 64-290.
- Sect. 232; panel of jurors exhausted by non appearance, excuse by court and peremptory challenge by accused, filled from bystanders; 64-289.
- Sect. 234, 239; abrogates the law as stated in *State v. Delong*, 12-453; *State v. Winebrenner*, 67-232.
- Sect. 244; requiring a second precept to issue for grand jurors, applies only where the entire panel is absent or illegally drawn (§ 4256); *State v. Miller*, 53-85; *State v. Miller*, 53-155.
- Sect. 281-3; board of supervisors, in determining the sufficiency of petition for removal of county seat, can not consider evidence other than affidavits accompanying petition and remonstrance; *Herrick v. Carpenter*, 54-343.
- Sect. 282; relocation of county seat; verification of petition stating that the signers are legal voters at the time of signing is sufficient; the jurat need not name the person signing and swearing, shown by the affidavit, nor need the notary public, signing as such, add to it his county or state; *Stone v. Miller*, 60-248.
- Sect. 283, 285, names of persons appearing on petition for submission of question of relocating county seat, and, also, upon remonstrance against the same, not to be counted on petition; 45-290.
- Sect. 284; notice of presentation of petition as to removal of county seat, sufficient, if one publication be made sixty days before presented; *Bennett v. Hetherington*, 41-152.
- Sect. 289 et seq.; see Stat., 1872, chap. 87, ante.
- Sect. 303; board of supervisors may employ special agent to collect such taxes as are not collectible by treasurer, as a duty; *Wilhelm v. Cedar Co.*, 59-255.
- Sect. 306, as to publication of notices, has no application to notices of judicial sales; but, is limited to county notices, on county business; *Herriman v. Moore*, 49-173.
- Sect. 307; publisher of newspaper designated to publish proceedings of board of supervisors not thereby entitled to publish the schedule of receipts and expenditure of the county, and can not recover therefor from county; *M'Bride v. Hardin Co.*, 58-223.

- Sect. 307; semi-annual report of treasurer to supervisors, at the time of his settlements, no part of proceedings of the board, and not to be published as such; *M'Bride v. Hardin Co.*, 58-223; *Haislett v. Howard Co.*, 58-370.
- Sect. 350; providing that, in certain cases, the duties of sheriff shall be performed by the coroner, applies to both criminal and civil cases. When accused files an affidavit that, by reason of partiality and prejudice, he believes the sheriff will act unfairly in selecting talesmen, the coroner should act; *State v. Hardin*, 46-624.
- Sect. 368; autopsy at inquest; coroner or J. P. shall fix the compensation; no original action against county, for fees, by physician; *Cushman v. Washington Co.*, 45-256.
- Sect. 382, leaves no discretion in board of supervisors as to division of township; if all pre-requisites are complied with and the petition properly presented the division must be made; *Henry v. Taylor*, 57-74.
- Sect. 384, as to the division of a township containing a city or incorporated town; the words for "election purposes" refer only to the election of officers for the new township; all other elections are to be held before the first of January following the order of division and must be held by the original township as before division; *Williams v. Poor*, 65-412.
- Sect. 390; assessor elected under this section, in a township containing a city or incorporated town, is a township, not city, officer; *Kinnie v. Waverly*, 42-487.
- Sect. 390, amended L., 1876, ch. 6, does not apply to cities organized and acting under special charters; *State v. Finger*, 46-26.
- Sect. 392; railroad aid tax; certificate of compliance by company not invalid, if duly signed, because trustees did not make it all a meeting and on order; *Merrill v. Welsher*, 50-70.
- Sect. 431; not unconstitutional, as conferring legislative power on a court, or that the exercise of the power creates a corporation; *Burlington v. Leebrick*, 43-258.
- Sect. 431, providing that cities may proceed in circuit court to annex contiguous territory, applies as well to municipal corporations created by special charter as to those organized under general law; *Burlington v. Leebrick*, 43-255.
- Sect. 431; the power to extend city boundaries, conferred by this section, by including territory not laid off into lots of two acres or less, is conferred on cities having special charters, by Stat., 1876, ch. 47 and, 1884, ch. 158; *Glass v. Cedar Rapids*, 68-208.
- Sect. 434; as to incorporation of cities and towns, allows abandonment of special charter or to remain under special organization; *Burlington v. Leebrick*, 45-257.
- Sect. 440, providing that part of territory of town or city may be severed therefrom, on petition of resident property holders; applies to all the territory thereof, whether laid out into lots or blocks or not; *M'Kean v. Mt. Vernon*, 51-307; *Way v. Center Point*, 51-708.
- Sect. 456; limits the power of cities and incorporated towns in respect to obstruction of streets to abating as a nuisance; no authority to pass ordinance to fine offenders; *Nevada v. Hutchins*, 59-507.
- Sect. 456, power to suppress and restrain billiard tables includes power to license under proper conditions; *Burlington v. Lawrence*, 42-681.
- Sect. 456; power to suppress and restrain disorderly houses conferred; not empower city to pass ordinance declaring the keeping of such house a misdemeanor, punishable by fine and imprisonment; *Chariton v. Barber*, 54-301.
- Sect. 456, 482, empower towns and cities to provide, by ordinance, for the arrest and punishment of persons found intoxicated; *Bloomfield v. Trimble*, 54-400.
- Sect. 457, 482; a city can not prohibit the erection of wooden buildings, within limits stated, save on petition of the owners of two-thirds of the ground included in any square or block; *Des Moines v. Gilchrist*, 67-212.
- Sect. 464; this section applies to a railroad located and partly constructed, prior to the day the section took effect; *Mulholland v. R'y Co.*, 60-745; *Hanson v. R'y Co.*, 61-690.

- Sect. 464, conferring on cities and towns, organized under the general incorporation law, authority to authorize or forbid railway tracks on streets does not affect a case where action was commenced before Code in force; *Ingram v. R. R. Co.*, 38-676.
- Sect. 464, confers, on city council, no authority to devote street or alley to a railway track for the private benefit of an individual; wherefore, a person who has been authorized to lay a private track along an alley can not oppose the right of a railroad company to appropriate the same alley under authority, on the ground of his prior right; *Heath v. R. R. Co.*, 61-17.
- Sect. 464, and Stat., 1890, ch. 96; city acting under special charter may not authorize a railroad company to use a street, for railroad purposes, without compensation to abutting lot owners; *Stange v. Dubuque*, 62-306.
- Sect. 464; under this section it is only when a railroad operated by steam is built along a street that an abutting lot owner is entitled to damages; such right does not exist on the construction of a horse railway; *Sears v. R'y Co.*, 65-744.
- Sect. 464; only those owning lots abutting upon that portion of a street which is used for railroad purposes can recover damages for such occupation; owners of lots abutting on a street crossed only by a railroad are not entitled; *Morgan v. R'y Co.*, 64-501.
- Sect. 464; it is the location and laying down of the railroad track, on a street, which entitles the lot owners to compensation; *Mulholland v. R. R. Co.*, 60-745; *Hanson v. R'y Co.*, 61-590.
- Sect. 464; a slight encroachment of a railroad road bed on a street, the road being on the company's own land, doing no injury to a land owner's property, will not justify a recovery of damages; *Rinard v. R'y Co.*, 66-443.
- Sect. 464; grant of right to construct a railroad on city street; duty of grantee to cause assessment of damages; *Mulholland v. R. R. Co.*, 60-743; *Hanson v. R'y Co.*, 61-590.
- Sect. 464, amended by Stat. 1874, ch. 6; compensation thereunder includes all legitimate damages; *Drady v. R. R. Co.*, 57-403.
- Sect. 464, amended by Statute, 1874, ch. 6; railroad company constructing track along street by authority; its successor in interest has no right to construct switches or side tracks on such street, without compensation to abutting lot owners injured; *Drady v. R. R. Co.*, 57-404.
- Sect. 464; the land owner is not authorized to cause a sheriff's jury to assess the damages on the taking of his land for railroad right of way; but, only the railroad owner may; *Mulholland v. R. R. Co.*, 60-740; *Wilson v. R'y Co.*, 67-513.
- Sect. 464; see Stat., 1874, ch. 7, post.
- Sect. 465-6; whether the cost of grading a city street, as distinguished from paving it, may be considered as a part of the cost of grading it depends on the actual necessity of the grading, to secure a proper foundation for the pavement; the fact that the city council regards the grading and paving as one work is not conclusive; *Scofield v. Council Bluffs*, 67-696.
- Sect. 465-6, street paved at expense of abutting owners and pavement torn up in the construction of a sewer; it can not be repaved at the expense of such abutting owners, but, must be accounted as part of the work of constructing the sewer, to be paid out of the general fund of the city; *Burlington v. Palmer*, 67-682.
- Sect. 466; authorizes cities to adopt ordinances assessing upon lots on the corners of streets the cost of improving one-fourth part of the space formed by the intersection of streets; *Wolf v. Keokuk*, 48-130.
- Sect. 466 (1872, chap. 45), does not empower city council to pass an ordinance to construct sidewalk and levy tax on abutting property, unless petition therefor presented to council, signed by a majority of abutting owners; without such petition three-fourths of members of council can not order; *Tallant v. Burlington*, 39-544.
- Sect. 466; the cost of constructing a gutter along a city street is chargeable, only, to property abutting on that part of the street along which the gutter is constructed; *Kendig v. Knight*, 60-33.

Sect. 466, a city ordinance; for the construction of gutters in streets, providing that the expense "shall be paid by the property holders along each side of said streets in proportion to the frontage each may own," is not invalid because not providing the cost shall be assessed as a charge on the abutting property; *Kendig v. Knight*, 60-34.

Sect. 466; paving a street may include a change of grade preparatory to paving, provided the whole improvement is but one undertaking and the assessment is made for the whole work, but it is not competent to charge abutting owners for grading a street, though with a view to paving at another time, as a separate improvement; *Bucroft v. Council Bluffs*, 63-649.

Sect. 466; a street railway company, having a right of way, for a track, over a street, is not taxable for the cost of street improvement, under this section; *Koons v. Lucas*, 52-181.

Sect. 464; decision of city or town authorities, as to expediency of opening street, conclusive; *Cherokee v. Land Co.*, 52-280; see *Bankhead v. Brown*, 25-540.

Sect. 469; is made applicable to cities acting under special charters, by section 479, and is not repealed by Stat., 1876, ch. 116, sections 8, 9, 10; *Phillips v. Council Bluffs*, 63-578.

Sect. 469; city liable in damages for injury to adjoining property by change of established grade of street, whether the injury be direct or caused by negligence or general depreciation in value; *Hempstead v. Des Moines*, 52-304; *Meyer v. Burlington*, 52-561.

Sect. 469; recovery on establishing new street grade for injuries to the whole property, inclusive of improvements; *Hempstead v. Des Moines*, 52-306; see *Dalzell v. Davenport*, 12-437.

Sect. 469; injury by change of grade of street; recovery for difference in value by reason of the change, less the enhancement in value by reason of the change; *Meyer v. Burlington*, 52-562.

Sect. 469; Stat. 1876, ch. 116, § 8; change of grade of street of city or town; lot owners recover only, on change of grade, according to damages subsequent to a previously established grade; *Kepple v. Keokuk*, 61-656.

Sect. 469; town altering established grade of street without prior assessment of damages acts unlawfully; action lies, to land owner damnified; *Noyes v. Mason City*, 53-419.

Sect. 469; the cause of action hereunder accrues upon the actual changing of the grade; not on the date of the passage of an ordinance authorizing it; *Hempstead v. Des Moines*, 63-38.

Sect. 474; authorizes a municipal corporation to contract with a foreign corporation the construction of water works; so contracting it may condemn and appropriate private property for the works; *Dodge v. Council Bluffs*, 57-564.

Sect. 476; a proceeding commenced, in the circuit court, to condemn land for the extension of a city street is a suit, under section 3419; it may be submitted to arbitrators; *Marion v. Ganby*, 68-143.

Sect. 478; constituting the liability for street improvements a lien upon the property of the abutting owner; not unconstitutional; *Burlington v. Quick*, 47-228.

Sect. 478; providing that special tax for street improvement shall be a lien upon the property of abutting owner; not unconstitutional; *Burlington v. Quick*, 47-228.

Sect. 478; does not require that the city shall institute suit against an abutting owner before it pays the contractor for making street improvement authorized; *Burlington v. Quick*, 47-229.

Sect. 478-9, 481; the exemption herein, of school property, from taxation does not apply to special taxation for the purpose of constructing a sidewalk before school property; *Sioux City v. Ind. Sch. Dist.*, 55-151.

Sect. 479; authorizing recovery by city for costs of improvements on streets, non obstante informalities or defects, not applicable to improvement ordered prior to Code in force; *Starr v. Burlington*, 45-90.

Sect. 479; "Informality, irregularity or defect," non obstante which a city may recover for sidewalk built along land owners' property, must be a mere error or omission, to do some thing in no manner affecting the jurisdiction to build the walk; *Charlton v. Holliday*, 60-394.

Sect. 479; gutter constructed on two streets under different resolutions; entire work on both considered in assessing; irregularity not defeating tax; *Kendig v. Knight*, 60-34.

Sect. 479; see § 469, ante.

Sect. 481, 495, relate only to the mode of collection of taxes and do not make the penalties, provided in § 866, applicable to special assessments; *Ankeny v. Herming-sen*, 54-32.

Sect. 482; authorizing cities to pass ordinances to improve the morals and order of community, does not empower such cities to pass ordinance declaring the keeping of a disorderly house a misdemeanor punishable by fine and imprisonment; *Charlton v. Barber*, 54-361.

Sect. 482; license granted on specified conditions; revocation on violation not a forfeiture beyond power of municipal corporation; *Hurber v. Baugh*, 43-515.

Sect. 482; a city can not prohibit the erection of wooden buildings within certain limits, except on the petition of owners of the grounds, included in any square or block, as provided by § 457; *Des Moines v. Gilchrist*, 67-212.

Sect. 482; see §§ 456, 482, ante.

Sect. 489; as to amending ordinances, has no application to an ordinance which repeals another by repugnancy thereto; *Des Moines v. Hillis*, 55-647.

Sect. 489; second and third readings and final passage of an ordinance may lawfully be at adjourned meetings of council; *Cutcomp v. Utt*, 60-157.

Sect. 489; resolution to change the boundaries of a city does not require, for its adoption, the concurrence of the whole number of trustees; *Strohm v. Iowa city*, 47-44.

Sect. 489; "an ordinance defining a prescribed punishment for offenses," not objectionable as containing more than one subject or as not setting out its subject in the title; *State v. Wells*, 46-663.

Sect. 489, under this section a city ordinance which contains more than one subject is void; but, an ordinance vacating an alley, and granting the vacated alley to an individual does not contain two subjects, within its meaning; *Dempsey v. Burlington*, 66-689.

Sect. 489 and Stat. 1880, ch. 146, do not make it a condition precedent to a right of action against city or town, upon a claim arising out of tort, that such claim be first presented to the city or town council; *Green v. Spencer*, 67-411.

Sect. 491; providing that city marshal's salary can not be diminished during his term, not repealed by Stat., 1878, ch. 56; *Bryan v. Des Moines*, 51-592.

Sect. 491; city abandoning charter organization and re-organizing under general law can not diminish salary of officer holding over, continuously, in office he held under charter; *Cox v. Burlington*, 43-613.

Sect. 493; as to manner of appointment to office by a common council, applies to all appointments; a majority of all members of the council, not a majority of those present, must vote for one to fill a vacancy; *State v. Dickie*, 47-629.

Sect. 493; it is essential to the validity of an ordinance, of every incorporated city or town, that the votes "yea and nay," upon its passage, be recorded; *Olin v. Myers*, 55-210.

Sect. 495; see § 481, 495, ante.

Sect. 500; the issue of a bond, in satisfaction of a judgment rendered against a municipal corporation, is equivalent to the making of a loan; *Sioux City v. Weare*, 59-98.

Sect. 503-8; tax deed required to be foreclosed, as a mortgage, to entitle holder to possession; *Crosthwait v. Byington*, 11-532; *Tredway v. McDonald*, 51-666.

Sect. 506; jurisdiction of mayor, of city or incorporated town, of violation of ordinances not exclusive; *J. P. has jurisdiction* (§ 4660); *Jaquith v. Royce*, 42-410.

- Sect. 506; rule, that mayor of city or incorporated town may take judicial notice of ordinance thereof, not changed; *LaPorte City v. Goodfellow*, 47-574.
- Sect. 506; change of venue may be had from court of mayor of incorporated town to court of justice of the peace; *Finch v. Martin*, 46-385.
- Sect. 506; county not liable to mayor of city for services as magistrate in state cases; *Upton v. Clinton Co.*, 52-812.
- Sect. 527; authority to a committee of city council to accept a dedication of a street and adoption of committee's report, that the land owner had complied with an ordinance in respect to dedication of streets, is not a compliance with the statute; *Laughlin v. Washington*, 63-654.
- Sect. 527, the duty enjoined, to keep all alleys open etc., has no reference to such obstructions as the city is empowered to authorize and does not deprive the city council of the power to authorize the use of alleys, for railway purposes, even though such use may to some extent interfere with their ordinary use; *Heath v. R. R. Co.*, 61-14.
- Sect. 527; if it be the duty of a road supervisor to make slight repairs about a country bridge and approaches, still, the same duty devolves on the county, when they are not so made; *Koby v. Appanoose Co.*, 63-114.
- Sect. 536; city marshal takes only constable's fees where these differ from sheriff fees; *Bryan v. Des Moines*, 51-593.
- Sect. 536, city marshal can not recover of county, in which a city is, for services rendered in administration of criminal law; *Christ v. Polk Co.*, 48-304.
- Sect. 562, relates only to the manner of vacating streets and alleys in unincorporated towns and villages; *Dempsey v. Burlington*, 67-692.
- Sect. 564; vacation of part of town plat by owners, closing some streets, not invalid therefor, unless some substantial right of other owners is abridged thereby; *Lorenzen v. Preston*, 53-581.
- Sect. 564; a part vacated under the statute; a city council, can not by an ex parte determination say that the act of vacation is void; and, an order, thereunder, will not authorize the opening of streets and alleys delineated upon the plat; *Conner v. Ia. City*, 36-420.
- Sect. 593; justices of the peace are county officers within the section; *Lynch v. Vermazen*, 61-77.
- Sect. 627, as to counting of ballots; word "error" employed, is used in the sense of excess; *Rankin v. Pitkin*, 50-314.
- Sect. 635-6, 638; board of supervisors is charged with duty to canvas returns of election for justice of the peace; *Lynch v. Vermazen*, 61-77.
- Sect. 699, 909; power of township trustees to divide township into road districts and to levy tax confined to territory not embraced in city; *Marks v. Woodbury Co.*, 47-454.
- Sect. 746, reports and settlements by a county treasurer, under this section, conclusive on him and sureties; impeachable only on showing mistakes therein; *Boone Co. v. Jones*, 54-708.
- Sect. 746-7, 752-3, 756; judge of circuit or district court may suspend sheriff or clerk from office; non obstante a petition can not be filed before close of the term; *M' Cue v. Circuit Ct.*, 51-66.
- Sect. 752; see § 767, post.
- Sect. 760, provides only for the suspension of an elective state officer, for defalcation, from the performance of official duties and not necessarily from the emoluments of the office; it is, therefore, not unconstitutional, as providing for an absolute removal or as attempting to clothe the governor with judicial power; *Brown v. Duffus*, 66-198. (o.)

(o.) *Brown v. Grover*, 6 Bush, 1.

- Sect. 767, sheriff suspended from office; board of supervisors appoint person to act (§ 752); *M' Cue v. Circuit Ct.*, 51-66.

- Sec. 767; in the absence, or disability, of the principal of an officer, the deputy may perform any of the duties pertaining to the office; *Sanzey v. Glass Co.*, 68-545.
- Sec. 769 (Rev., 1860, § 711); will not exempt land not used for objects of the church—as for farming purposes; *Mulroy v. Churchman*, 52-240.
- Sec. 771; written agreement of treasurer, he to pay for services of deputy; appointment of deputy by supervisors not render county liable; *Harvey v. Tama Co.*, 46-523.
- Sec. 787; board of supervisors, having appointed one to fill vacancy in an elective office, can not remove the appointee at pleasure; *State v. Chatburn*, 63-661.
- Sec. 790, limitation of action, for recovery of property sold for taxes, runs from date of completed sale; which is whenever the right to a deed is perfect; *Hintrager v. Hennessy*, 46-600; *Thornton v. Jones*, 47-399.
- Sec. 797, cl. 1; to exempt real estate from taxation, use and ownership (legal or equitable) must combine in the same person; *Laurent v. Muscatine*, 59-406.
- Sec. 797; exempting all property upon the grounds of occupation for literary institutions, including professor's residences and residences of clergymen, used as such exclusively and owned by religious societies, without income to owners, from taxation; constitutional; *Trustees v. State*, 46-277. (p.)
- (A.) *Wesleyan Acad. v. Wiebraham*, 99 Mass., 599; *State v. Ross*, 4 Zab., 497; *Kendrick v. Farquhar*, 8 Oh., 187; *Trustees v. Ellis*, 38 Ind., 3; *Vail v. Beach*, 10 Kas., 214; *St. Peter's Church v. Board of Commissioners*, 12 Minn., 395.
- Sec. 797; land held in trust for religious purposes; only such part as is used for such purposes exempt from taxation; *Mulroy v. Churchman*, 60-719.
- Sec. 797; benevolent society's building leased for profit is taxable, though it was built from an exempt fund in to which the rents are paid; *F. Des M. Lodge v. Polk Co.*, 56-35.
- Sec. 797; property devised in trust for an incorporated town, the rents and profits to be applied to a public use; the property is subject to taxation; *Mitchellville v. Supervisors*, 64-555.
- Sec. 797, exempting certain property from taxation; does not exempt property of water company, the primary and exclusive use of which is not the extinguishing of fires; *Water Co.'s appeal*; 48-329.
- Sec. 797, cl. 6, as to exemption from taxation; a printer is a mechanic within the section; press and materials, to value of \$300, exempt; *Smith v. Osburn*, 53-476.
- Sec. 798; exemption from taxation, planting forest trees; compliance with the conditions imposed does not vest such a right as precludes change, modification or repeal of the statute; *Shiner v. Jacobs*, 62-393.
- Sec. 800; tax rebated by supervisors, having been theretofore paid; an order of the board to the treasurer to refund is requisite; *Crosby v. Floete*, 65-371. *Dubitatur*; whether an auditor's warrant be not, also, necessary. *Ib.*
- Sec. 801, 812-3, 821, and Stat., 1884, ch. 15, authorize and require shares of bank stock to be assessed to their owners; *Henkle v. Keota* (and three other cases), 68-338.
- Sec. 802; an indebtedness arising on a parol sale of land, upon which a part of the purchase money has been paid, is a taxable "credit"; *Perrine v. Jacobs*, 64-80.
- Sec. 803-823; administrator in possession of personalty of the estate, residing in county in which decedent died, but in a different township; property taxable in township of administrator's residence; *Cameron v. Burlington*, 56-321.
- Sec. 812; not necessary to validity of tax assessment, of realty, that assessor personally examine the land; *Beeson v. Johns*, 59-167.
- Sec. 812; personal property is not taxable to one who acquires it after January 1, for that year; *Wangler v. Black Hawk Co.*, 56-385.
- Sec. 812; personal property brought in to the state after Jan. 1, is not taxable for that year; *Wangler v. Black Hawk Co.*, 56-386.
- Sec. 812, providing for the assessment of real estate in Jan. of each alternate year, is not in conflict with § 1317; *Cent. R'y Co. v. Supervisors*, 67-200.

- Sect. 814, 817; whether the tax payer is entitled to have an acknowledgment of indebtedness deducted from the amount of moneys and credits which he is required to list for assessment, depends on whether it is founded on an actual consideration; *Hutchinson v. Board of Equalization*, 67-184.
- Sect. 817; providing for the taxation of moneys, credits, etc., held by any one as agent, in Iowa, for pecuniary profit, is not unconstitutional, as taking private property for public use; *Hutchison v. Bd. of Equaliz.*, 66-39.
- Sect. 818; for the taxation of national bank shares, does not discriminate against national banks; *National Bk. v. Bd. Equal.*, 64-141.
- Sect. 821; when an assessor of tax has described a lot by number and placed a valuation on the same his work is complete, the description embraces all appurtenances; *Gas Light Co. v. Ins. Co.*, 51-34.
- Sect. 823, does not conclusively provide that the assessor shall assess all property which may have been in the township on Jan. 1, of the year for which assessment is made; *Rhyno v. Madison Co.*, 42-634.
- Sect. 823; see §§ 802, 823, ante.
- Sect. 829; the provision that the township or city board of equalization shall keep a record of its proceedings is directory; increase of assessment not void for want thereof; *Hutchinson v. Bd. of Equaliz.*, 66-37.
- Sect. 831; on appeal from the board of equalization the court to which the appeal is taken can not increase the assessment; *Water Co's. Appeal*, 48-332.
- Sect. 831, in relation to boards of equalization; if the second section of the Stat. 1880, ch. 100, be unconstitutional the first and third sections remain intact, on the question of the title of the act; *Henkle v. Keota*, 68-342.
- Sect. 837, 841; the county auditor in transcribing the assessment roll may amend, by inserting the name of the true owner of land, as shown by his plat book; *Adams v. Snow*, 65-438; see Rev., 1880, § 747 ante.
- Sect. 865, taxes levied upon personal property become a lien on the realty belonging to the owner of the personalty, or which he may acquire, but, not on the personalty taxed; *Jaffray v. Anderson*, 66-720.
- Sect. 866; see §§ 481, 495, ante.
- Sect. 870, taxes erroneously exacted and paid; it is the duty of the supervisors to order the county treasurer to refund the same out of the several funds to which the tax was apportioned; *R. R. Land Co. v. Woodbury Co.*, 64-215.
- Sect. 870, as to the refunding of taxes in certain cases, includes taxes paid by a purchaser at tax sale, for which the land is illegally sold; as by reason of their not being brought forward on the tax list; *Parker v. Cochran*, 64-760.
- Sect. 870; assessment of tax, for moneys and credits, without deduction for debts; no claim on assessor for deduction, no appearance before board of equalization and voluntary payment; tax not illegally exacted or paid, no recovery against county; *Leonard v. Mason Co.*, 64-418.
- Sect. 870; under this section, where land was assessed to one neither owner, mortgagee nor lessee, and sold for his personal taxes, held the owner might recover from the county money paid to redeem; *Brownlee v. Marion Co.*, 53-487.
- Sect. 870; erroneous or illegal tax paid, tax payer has action for recovery; his failure to pursue other remedies, to defeat the collection, will not waive his right of recovery; *Dickey v. Polk Co.*, 58-289.
- Sect. 870 (see Rev., 1880, § 762); tax not levied paid; action lies to recover, on refusal of supervisors to refund; *Isbell v. Crawford Co.*, 40-102.
- Sect. 871; the word "taxes," in this section, means state and county taxes only; not railroad taxes; *Crowell v. Merrill*, 60-54.
- Sect. 871; sale of land for taxes divests lien of all prior unpaid taxes. The rule operates both in favor of redemptioner and purchaser; *Hough v. Easley*, 47-332.
- Sect. 871; where taxes are due and delinquent for successive years and sale made for a part only of such years a deed made, pursuant to such sale, will not be set aside at the instance of the owner of the patent title; *Kessey v. Connell*, 68-432.

- Sect. 876; purchaser at tax sale who offers to pay taxes for less than the whole tract acquires an undivided interest in the whole tract; *Brundige v. Maloney*, **52-218**.
- Sect. 885 (Rev. 1880, § 775); entry of sale for taxes to one not present, who assigns deputy treasurer; sale invalid; *Ellis v. Peck*, **45-113**.
- Sect. 889; requiring a purchaser at tax sale, upon paying subsequent taxes, to file the duplicate tax receipts with the county auditor, in order to recover the tax upon redemption; does not apply to one who has a tax deed and pays as owner; *Thode v. Spofford*, **65-301**.
- ect. 891; county treasurer has no right to disregard auditor's act in allowing redemption from tax sale and, thereafter, to execute deed to purchaser; *Hartman v. Anderson*, **48-310**.
- Sect. 892, does not limit the time within which the right of redemption attaches; it prescribes the period of its duration; action to redeem may be during ward's minority; *Witt v. Mewhirter*, **57-550**.
- Sect. 893; in action by a minor to redeem from tax sale, after deed executed, error to refuse to set off rents and profits of the land, while held under the tax deed, against the redemption price; *Strang v. Burris*, **61-379**.
- Sect. 893; action by a minor to redeem from sale after tax deed is made; all points determined against defendant; error to tax costs against plaintiff; *Strang v. Burris*, **61-378**.
- Sect. 894, service of notice to redeem from tax sale is properly made upon the holder of the legal title to the land; such notice may be served by the holder of the certificate of sale in person and the person to be served is he in whose name the land is taxed at the time of notice, not the date of sale; *Hall v. Guthridge*, **52-410**; *Heaton v. Knight*, **63-687**.
- Sect. 894, tax deed presumptive evidence of service of the notice required of expiration of redemption period; where service of notice is not made, in the absence of proof to the contrary, it is presumed the land was taxed to an unknown owner and unoccupied; *Fuller v. Armstrong*, **53-684**.
- Sect. 894; redemption from tax sale may be made any time before ninety days expired from service of the notice required, proved and filed in proper office; *Swope v. Prior*, **58-412**; *Cummings v. Wilson*, **59-15**.
- Sect. 894, to perfect service of notice of expiration of redemption period, as to land sold for taxes, the affidavit must be signed and verified by the holder of certificate of purchase, his agent or attorney; affidavit by newspaper proprietor, of publication, not sufficient; *Miss. Assoc. v. Smith*, **59-705**; *Ellsworth v. Cordrey*, **63-678**.
- Sect. 894; right of redemption, from tax sale, expires in ninety days from completed service of notice; deed executed or not; *Ellsworth v. Low*, **62-178**.
- Sect. 894; right to redeem, from tax sale, is not cut off by service by publication of notice of expiration of redemption period, the land being timber land, unfit for cultivation and the owner, resident of the county, cutting the timber off; *Ellsworth v. Low*, **62-179**.
- Sect. 894; land taxed to unknown owner, at the time when notice of the expiration of redemption period should be given; deed issue after three years without notice; *Tuttle v. Griffin*, **64-457**; *Chambers v. Haddock*, **64-558**; *Parker v. Cochran*, **64-761**; *Meredith v. Phelps*, **65-118**; *Garmoe v. Sturgeon*, **65-150**.
- Sect. 894; mere request that foreman of a newspaper office shall furnish affidavit of publication of notice of expiration of redemption period does not constitute him the agent of purchaser, at tax sale, to verify the publication; *Chambers v. Haddock*, **64-557**.
- Sect. 894, as to notice of the expiration of period to redeem from tax sale, has reference to the person in actual possession only; it does not require notice to the owner of land in the actual possession of no one; *Parker v. Cochran*, **64-761**.
- Sect. 894; the person to whom land is assessed, when notice of the expiration of the time for redemption from tax sale should be given, is the person to whom it is taxed,

- within the meaning of the statute; *Heaton v. Knight*, 65-435; *Adams v. Snow*, 65-437.
- Sect. 894; a notice by publication of the expiration of redemption period from tax sale which does not show the place and date of publication does not justify the execution of a deed; *Kessey v. Connell*, 65-434.
- Sect. 894-5; as to the notice of the expiration of the time for the service of original notice prescribes only the mode of service, not the person who shall make the service or return thereof; before a valid deed can be issued by the treasurer the provisions of the statute must be complied with; *Ellsworth v. Van Ort*, 67-223.
- Sect. 897; tax sale fraudulent as to land owner, his right to contest title not defeated by this section, though he has not paid all taxes due; *Miller v. Corbin*, 46-153.
- Sect. 897; where those questioning a tax title, are allowed to testify they owned the property at the time of sale, record evidence of title not being demanded, there is a basis for the introduction of other evidence assailing the tax title; *Brandirff v. Harrison Co.*, 50-169; *Hintrager v. Kiene*, 62-609.
- Sect. 897; tender, to county treasurer, of the amount necessary to redeem from tax sale rejected; offer in bill in equity of readiness to pay the sum found due; a sufficient tender; *Heaton v. Knight*, 63-638.
- Sect. 897, limitation to recovery of land under tax sale runs from the record of the deed; *Griffith's Exec. v. Carter*, 64-196; see Rev., 1860, § 784, supra.
- Sect. 897; does not require one to show a tender of the amount necessary to redeem from tax sale, to the holder of a deed which is void, for want of notice to redeem; *Adams v. Snow*, 65-439.
- Sect. 897, does not require that one claiming land sold for taxes, as a pre-requisite of action to cancel the tax deed, shall render to the holder of the deed taxes he has paid with interest and penalties; an averment of readiness to reimburse the amount as found due by the court is sufficient; *Taylor v. Ormsby*, 66-112.
- Sect. 897; the object of this provision is to prevent a stranger from questioning a tax title; one claiming under a prior tax title is not such person; *Adams v. Burdick*; 68-668.
- Sect. 902, the special limitation, imposed on actions for possession, by this section, applies, only to actions between the holder of tax deed and owner at the time of tax sale or those claiming through him; *Lockridge v. Daggett*, 54-333.
- Sect. 902; in order that this section may apply, the concurrence of two things is essential; 1, the property must have been sold; 2, the sale must have been for non payment of taxes; *Patton v. Litther*, 47-237.
- Sect. 902, holder of tax deed may recover possession, as against a stranger, after five years elapsed from recording tax deed; *Lockridge v. Daggett*, 47-680.
- Sect. 902; unoccupied land deemed in possession of holder of tax deed; possession uninterrupted for five years, from record of deed, title perfect; *Coal Co. v. Blair*, 51-448; *Lewis v. Soule*, 52-13.
- Sect. 902 (Rev., 1860, § 790); original owner of land in adverse possession for five years after tax deed recorded; purchaser barred of recovery; *Peck v. Sexton*, 41-568; see *Brown v. Painter*, 38-456.
- Sect. 902 (Rev., 1860, § 790); tax purchaser can not recover possession after the expiration of five years from the recording of his deed; ex. gr., four years after the execution of a tax deed the holder of the patent title took possession, it being, at that time, unoccupied land; it was held that in an action brought after five years there could be no recovery; *Barrett v. Love*, 46-106.
- Sect. 903, does not bar action to recover real property within five years, in case of fictitious tax sale; *Early v. Whittingham*, 43-167; *Case v. Albee*, 28-277.
- Sect. 905; the "stub" of a redemption certificate is a record of the county auditor's office; evidence of the matters contained therein; *Ellsworth v. Low*, 62-181.
- Sect. 912; a deposit in bank, by county treasurer, of county funds is, in effect, a loan or use of the money for private purposes; *Lowry v. Polk Co.*, 51-52.

Sect. 921; county auditor has no authority to establish a highway less than 66 feet wide; board of supervisors may, for good reason; and, if the auditor illegally does so, the board of supervisors may vacate it; *State v. Wagner*, 45-483.

Sect. 921; road over 40 feet wide; auditor's proceedings to establish read to and approved by board supervisors; his action adopted as that of the board and road legalized; *State v. Barlow*, 61-573.

Sect. 922; petition to establish a highway, addressed to the county auditor—clerk of the board of supervisors—gives the board jurisdiction thereof; *State v. Barlow*, 61-573.

Sect. 923; section as to filing bond for expenses, directory; bond not filed before petition for a road filed, proceedings to establish not invalid; *State v. Barlow*, 61-573.

Sect. 927; adverse report of commissioner, to examine as to expediency of establishing or vacating highway, ends all proceedings; no power of re-appointment; *Cook v. Trigg*, 52-709.

Sect. 936; notice of establishing highway must be served on owner of land, as shown by transfer books in auditor's office; *Wilson v. Hathaway*, 42-173.

Sect. 936; notice of proposed highway must be personally served upon resident abutting land owner, as shown by the transfer book; if the owner be non resident notice must be served upon the occupant of the land to be affected—if there be such; *Alcott v. Acheson*, 49-571.

Sect. 936-7; to give supervisors' board jurisdiction to establish a highway, an affidavit of the publication of the notice herein required need not be filed in auditor's office; if the auditor is satisfied publication was made, it suffices, in the absence of proof of non publication; *Pagels v. Oaks*, 64-200.

Sect. 937, 939; county auditor is ousted of jurisdiction, as to establishing highway, by filing of objection or claim for damages; *Ressler v. Hirshire*, 52-509.

Sect. 941, 946; merely relate to the manner of recovery of damages, after allowed; not to when damages are recoverable; *Brady v. Shinkle*, 40-478.

Sect. 943; one appraiser, on establishing a highway, failed to appear at the appointed time; postponement of action for two days, that he might appear, instead of filling the vacancy; non prejudicial irregularity and affirmance of establishment not error; *Johnson v. Supervisors*, 61-02.

Sect. 946-7, 959, 962; appeal lies, to land owner, from order establishing highway, on condition petitioners pay the appraised damages; *M'Nichols v. Wilson*, 42-389.

Sect. 957, 967; do not render illegal, highways established by dedication or prescription; *Baldwin v. Herbst*, 54-170.

Sect. 959, 961; appeal from order establishing a highway by one to whom damages are not awarded and no payment being ordered made from county treasury; the county is defendant and notice should be served on auditor; *Raymond v. Clay Co.*, 68-131.

Sect. 964; board of supervisors not authorized to make re-survey of highway when the line of road can be traced, on the ground, by recorded field notes; *Blair v. Boesch*, 59-555.

Sect. 964; re-survey of highway will not establish one, where none had been legally established; *Carey v. Weitgenant*, 52-660.

Sect. 969; see §§ 690, 969, ante.

Sect. 993; mandamus lies to compel road supervisors to remove trees obstructing highway; *Patterson v. Vail*, 43-145.

Sect. 996; township trustees have no control of road fund, save so much as is set apart for general township purposes; road supervisor to receive and expend it; *Henderson v. Simpson*, 45-521.

Sect. 997; authorizes the creation of a debt due the supervisor, to be paid out of the general township fund; *Wells v. Grubb*, 58-388.

Sect. 997; orders issued by direction of township trustees, in settlement with road supervisors, may be drawn upon the township clerk and, then, are payable from the

- general township fund; mandamus will be to enforce their payment; *Tobin v. Towns*, 52-82.
- Sect. 1061; stockholders of a corporation are not individually liable because the corporation incurs an indebtedness exceeding two-thirds of its capital stock; *Langan v. Constr. Co.*, 49-323.
- Sect. 1064; failure to publish notice of incorporation subjects corporators to individual liability; *Eisfield v. Kenworth*, 50-391.
- Sect. 1068; in this section the word "and" should be read as "or"; stockholders of a corporation are personally liable for debts where there is a failure of substantial compliance with statute requirements as to organization or publicity; *Eisfield v. Kenworth*, 50-390.
- Sect. 1068; on failure substantially to comply with the law in respect to publicity the members of the association become primarily liable for its debts; *Marshall v. Harris*, 55-183.
- Sect. 1071; to authorize recovery against a member of a corporation, under this section, fraud must be shown; *Hoffman v. Dickey*, 54-136.
- Sect. 1076; failure to comply with requirements of this section does not render the private property of stockholders in corporation liable for its debts; *Langan v. Construct. Co.*, 49-323, following *M'Kellar v. Stout*, 14-300.
- Sect. 1076-7; see Rev., 1890, §§ 1161-2, ante.
- Sect. 1078, as to manner of keeping corporate books; stockholders not personally liable to creditors for failure to comply; *Langan v. Constr. Co.*, 49-323.
- Sect. 1082, stockholder, in action by creditors to recover amount of his unpaid subscription on judgment taken against the corporation, can not set off the indebtedness to him of the corporation; *Singer v. Given*, 61-97.
- Sect. 1082, 1084; corporation issuing stock at less than its par value: stockholders liable to creditors for unpaid balance; *Jackson v. Traer*, 64-476.
- Sect. 1082-4, creditor's action, against a stockholder in a corporation, for an unpaid balance due on stock, accrues when it is clear that the corporation has no property from which the debt can be made; *Nat. Bk. v. Greene*, 64-450.
- Sect. 1082, 1084; the stockholder's liability to creditors of a corporation, is fixed by a simple failure to pay for the stock issued to him; *Chisholm v. Forny*, 65-336.
- Sect. 1082, 1084; corporation for the manufacture of a patented article, the whole amount of stock issued to corporators in exchange for their interest in the patent, which was worthless; stockholders liable to creditors to the extent of stock taken; *Chisholm v. Forny*, 65-335.
- Sect. 1083; execution lost; parol admissible to prove what the return showed, but, not to contradict it, by showing the absence of demand; *Singer v. Given*, 61-95.
- Sect. 1084; competent in action against stockholder, based on judgment against the corporation, to render judgment against him for the amount of his unpaid subscription; *Singer v. Given*, 61-97.
- Sect. 1089; dubitatur; does this section, in a chapter treating of corporations for pecuniary profit, apply to a religious corporation organized under a second chapter; *Kirkpatrick v. U. P. Church*, 63-374.
- Sect. 1089; if the rights contemplated in this section are attempted to be enforced in an action, its provisions apply, whether the person claiming them be plaintiff or defendant; *Quinn v. Shields*, 62-138.
- Sect. 1091; the members of such an association not incorporated (anti-horse thief association, in this case) is liable only for the wrongs done by him personally; to create, against a member, a personal liability for a wrongful associate act, it must be shown he voted in favor of the unlawful act, or aided or contributed money towards the doing of the unlawful act; *Johnson v. Miller*, 63-535.
- Sect. 1109, authorizes a county agricultural society to offer a premium to the winner at a horse race, or trial of speed, to be held on its grounds during its annual fair; *Deller v. Agric. Soc.*, 57-483.

- Sect. 1114, this section does not prohibit trials of speed or horse racing, when under control of a county agricultural society, and, as a means for improving the stock of horses; *Deller v. Agric. Soc.*, 57-484.
- Sect. 1146; negotiable note given for insurance, but, not so expressing on its face, transferred for value before due, protected in hand of innocent purchaser; *Cook v. Weirman*, 51-561.
- Sect. 1160; the ancient order of united workmen is an insurance company within the statute; *State v. Miller*, 66-34.
- Sect. 1160-1; mutual aid association, organized hereunder, for insurance of its own members, not held to compliance with Code provisions (1873, title 9, ch. 5), relating to life insurance companies; the word "every," in § 1161, limited to stock and mutual companies; *State v. Mut. Aid Assoc.*, 59-132.
- Sect. 1182, 2372; proceeds of insurance, on life of husband or wife, realized not exempt from liability to survivor's debts; *Smiedley v. Felt*, 43-608.
- Sect. 1182, 2372; wife surviving husband without child; she takes proceeds of life insurance to exclusion of heirs; *Rhode v. Bank*, 52-376.
- Sect. 1186; does not authorize the taking of interest on premiums by building associations; where such interest is contracted for as renders the total interest charge greater than the legal rate, on the amount actually received by the borrower, there is usury; *Loan Ass'n v. Heider*, 55-426; see *Loan Ass'n v. Blackburn*, 48-387.
- Sect. 1201; proceeding, under this section, for license to raise a dam, pleadable in bar to action for subsequent injuries arising from the dam, although no damages were allowed; *Watson v. Van Meter*, 43-78.
- Sect. 1207, work of ditching to be ordered on petition of residents, in the county, owning adjacent lands; *Patterson v. Baumer*, 43-479.
- Sect. 1207 et seq., authorizing counties to construct necessary ditches, and assess cost on property benefited, not unconstitutional; *Hatch v. Pottawatamie Co.*, 43-444.
- Sect. 1207-35; ditch constructed under this chapter and payment of warrant, drawn on ditch fund, refused, by reason of failure to levy a tax to create a fund (§ 1214); holder of warrant entitled to judgment against the county and to enforce payment of tax levy; *Nat. Bk. v. Mills Co.*, 67-697.
- Sect. 1214; see §§ 1207-35, ante.
- Sect. 1220, providing that any person who, by drains or adit levels, shall rid lead bearing mineral lands of water, making them available for purposes of mining, shall be entitled to 1-10 of all lead mineral taken therefrom, is valid; *Ahern v. Mining Co.*, 48-141. (q.)
- (q.) *Munn v. Ill.*, 4 Otto, 113; *C. B. & Q. Co. v. Ia.*, 4 Otto, 155; *Peik v. C. & N. W. R'y Co.*, 4 Otto, 164; *Winona etc. R'y Co. v. Blake*, 4 Otto, 180.
- Sect. 1241, the restrictions as to what is "necessary," applies to the quantity of land to be taken for right of way; not to the quantity of earth, gravel, stone, timber etc., which may be removed from the land condemned; *Winkleman v. R'y Co.*, 62-20.
- Sect. 1241, defines the word "use"; as applied to railroads; the "convenient use" of a railroad does not mean the construction of appurtenances thereto; *Vermilya v. Chi., M. & St. P. R'y Cos.*; 66-609.
- Sect. 1244, condemnation for railroad right of way, the land owner having agreed to accept a price to be paid by a person named, possession being taken before price fixed; the land owner is entitled to an assessment by commissioners; *Corbin v. R'y Co.*, 66-271.
- Sect. 1247, notice on the condemnation of land for railroad right of way, by publication, "to all other persons having any interest" etc., will not bind one not named; *Birge v. R'y Co.*, 65-442.
- Sect. 1252; assessment of damages for opening right of way to coal land; owner's appeal from award and damages lessened; court may direct part of costs of appeal to be paid by the owners, non obstante this section; *Jones v. Mahaska Coal Co.*, 47-41.

- Sect. 1255, 1257-8, award made on condemnation of land for railroad right of way increased on appeal in circuit court; on appeal to the supreme court a supersedeas bond does not relieve the company from the duty of depositing the amount last awarded; its occupancy of the land without such deposit is unlawful; *Downing v. R'y Co.*, 63-179.
- Sect. 1259, on inquiry as to damages on condemnation of railroad right of way, the jury on appeal is not limited to the determination of the original injury, at the time of taking the land; *Noble v. R'y Co.* 61-639.
- Sect. 1260, amended by Statutes 1874, ch. 65, as to abandonment of railroad line, contemplates there may be an abandonment of part of a constructed road; *R. R. Co. v. R. R. Co.*, 57-252.
- Sect. 1262, power granted to railroad companies to occupy city streets with their tracks withdrawn, by implication, by Stat., 1874, ch., 47; *Stanley v. Davenport*, 54-466.
- Sect. 1262 (Rev., 1860, § 1321); railroad company has right, subject to proper equitable control and police regulation, to pass over a street of a city without consent of city authorities; *Chi., N. & S. W. R. R. Co. v. Mayor*, 36-299; *State v. Dav. & St. P. R. R. Co.*, 47-508.
- Sect. 1262-3; railroad crossing a city street below grade; the company is under duty to keep a bridge over the track and its approaches in safe condition; *Newton v. R'y Co.*, 66-420.
- Sect. 1268; an open crossing is within the contemplation of the section, and may be required when it is the only "adequate means" of crossing which can be afforded a land owner; *Boggs v. R. R. Co.*, 54-439.
- Sect. 1278, 1307, making lessees of railroads liable to the same extent that the lessor company may be, provide merely a cumulative remedy, and do not release the lessor company; *Bower v. R. R. Co.*, 42-548.
- Sect. 1278, 1307, a receiver is within the meaning of the statute, and the property in his hands is liable for the claim of an employe for injuries received through the negligence of co-employe; *Sloan v. R'y Co.*, 62-732.
- Sect. 1288, simply renders railroad company liable for damages sustained by reason of refusal or neglect to erect a sign; *Lang v. Mining Co.*, 49-473.
- Sect. 1288; on failure of railroad company to erect sign at crossing, it is absolutely liable when shown a person injured at such crossing; injury and neglect to erect establishes liability; person need not show his care; *Payne v. C., R. I. & P. R. R. Co.*, 44-237.
- Sect. 1288, requiring railroad companies to provide cattle guards, applies to lands improved or indorsed after the construction of the road; *Heskett v. R'y Co.*, 61-468.
- Sect. 1288, a cattle guard is not an essential part of a fence; injury to stock by defect of guard, single damages only; *Moriarty v. R'y Co.*, 64-699.
- Sect. 1288; a cattle guard is some thing which will prevent animals from passing over the right of way upon inclosed land, and must extend quite across the right of way; *Heskett v. R'y Co.*, 61-470.
- Sect. 1288; the provision of the section is not limited to lands outside of the right of way of railroads which are fenced for cultivation or pasture; it applies to the case where the corporation fences its right of way; *Robinson v. R'y Co.*, 67-204.
- Sect. 1289, as to double damages for stock killed, is not unconstitutional; *Welsh v. R. R. Co.*, 53-633; *Jones v. R. R. Co.*, 16-8.
- Sect. 1289, as to double damages for stock killed; not penal; *Koons v. R'y Co.*, 23-496; *Mackie v. Cent. R. R. Co.*, 54-542.
- Sect. 1289, imposes no restriction on speed of railroad trains outside of depot limits; wherefore, liability for stock killed just beyond limits not affected by fast trains proceeding at greater speed; *Monahan v. Keokuk etc. Co.*, 45-526.
- Sect. 1289; the phrase "live stock," used in this section as to the liability of railroad corporations, includes swine; *Lee v. R'y Co.*, 66-133.

- Sect. 1289; the latter part of this section, making railroads liable for operating trains in depot grounds at greater speed than eight miles per hour, will not be construed to authorize the recovery of double damages for injuries to stock caused by a violation of the statute; *Miller v. R. R. Co.*, 59-711.
- Sect. 1289; liability of railroad company for injury to stock when want of fence and acts of agent in connection are the proximate causes of injury; *Young v. St. L., K. C. & N. R'y Co.*, 44-173.
- Sect. 1289; as to liability for stock injured by railroad train where the track may be, but is not fenced excludes all defenses except such as arise from the wilful act of the owner; *Krebs v. R'y Co.*, 64-672.
- Sect. 1289; to escape liability, under this section, a railroad company must not only fence but keep the road sufficiently fenced; *Bennett v. R. R. Co.*, 61-356.
- Sect. 1289; a cattle guard is not an essential part of a fence within the statute; *Moriarty v. R'y Co.*, 64-699.
- Sect. 1289; mere negligence on the part of the owner of stock does not defeat his recovery for stock injured by railroad train; *Inman v. R. R. Co.*, 60-462.
- Sect. 1289; in action for the value of stock killed on a railroad track, the burden is on the operator of the train to prove sufficiency of the fence; *Brentner v. R'y Co.*, 68-533.
- Sect. 1289; horse escaped from control and at liberty, at large within the section, though saddled and bridled; *Welsh v. R. R. Co.*, 53-634.
- Sect. 1289; a team of horses harnessed to a wagon, having escaped from the owner's control, is within the term "live stock running at large"; *Inman v. R. R. Co.*, 60-462.
- Sect. 1289; horse at large in the night time on the premises of another in violation of the night herd law, in force, and killed by a railroad train, without fault or negligence of the railroad company, at a place where it had a right to fence but did not; liability for value the owners wilful act not shown to contribute to the injury; *Krebs v. R'y Co.*, 64-672.
- Sect. 1289; allowing swine to run on their owner's land in close proximity to an unfenced railroad track is not a "wilful act of the owner" precluding recovery for injury by a train; *Lee v. R'y Co.*, 66-133.
- Sect. 1289; swine at large on their owner's land entering upon a railroad track at a point where the company may, but does not, fence and being killed; liability without proof of negligence of company's servants; *Lee v. R'y Co.*, 66-133.
- Sect. 1289; gates at crossings are parts of a railroad company's fence; liable for injuries to stock by reason of defective condition; *Mackie v. Cent. R. R.*, 54-541; see *M'Kinley v. R. R. Co.*, 47-76.
- Sect. 1289; notice and affidavits of claim on railroad company for stock killed need only contain statement of claim and fact of injury; *Mackie v. Cent. R. R.* 54-541.
- Sect. 1289, notice of claim, for damage to stock on railroad, served on the "station agent of the road" at a place named sufficient; *Welsh v. R. R. Co.*, 53-633.
- Sect. 1289; in order to recover double damages for injury to stock, by railroad train, the notice and affidavit may be served by delivery, without reading; *Brentner v. R'y Co.*, 68-532.
- Sect. 1289, as to liability for stock killed by railroad train where road not fenced; notice to "Iowa Central R'y Co." instead of to "Central Iowa R'y Co." not invalid; names synonymous; *Martin v. R'y Co.*, 59-412.
- Sect. 1289, the moving of trains over a railroad, for whatever purpose (in this case a construction train), is operating a railroad, within the section and creates the liability for injury to stock; *Glandon v. R'y Co.*, 68-459.
- Sect. 1289, rendering railroad companies liable for all damages by fire occasioned by operation of road, not unconstitutional; *Rodemacher v. R'y Co.*, 41-300.
- Sect. 1289; as to liability of railroad companies for damages by fire set out or caused by the operation of their roads, does not create an absolute liability; but, makes the

fact of an injury so occurring prima facie evidence of negligence, rebuttable by proof of freedom from negligence; *Small v. R. R. Co.*, 50-330; *Slosson v. R. R. Co.*, 51-295; *Libby v. R. R. Co.*, 52-93; *Babcock v. R'y Co.*, 62-505.

Sect. 1280, written notice of loss not essential to validity of claim for injury by fire caused by operation of railroad; *Rodemacher v. R'y Co.*, 41-310.

Sect. 1307, as to liability of railroad company for injury to employe of railroad company by negligence of co-employe not invalid, as imposing a liability not common to all persons and corporations; *Bucklew v. R'y Co.*, 64-611, so as to the title of the act of 1862, ch. 169; *M'Aunich v. R. R. Co.*, 20-342.

Sect. 1307; railroad companies liable for all damages by negligence of agents or employes; no special contract will exempt. The statute applies equally to passengers and servants; *Rose v. R. R. Co.*, 39-250.

Sect. 1307; as to liability of railroad company for injuries to employes by negligence of co-employes, applies only to accidents growing out of use and operation of road; *Schroeder v. R. R. Co.*, 41-347.

Sect. 1307; employe of railroad company, to recover for injuries inflicted through negligence of co-employe, must show that his employment was connected with the operation of the railroad; *Smith v. R. R. Co.*, 59-74.

Sect. 1307; to maintain action under the section it must appear that the duties of the employe are such as to expose him to the perils of the business of railroad companies; *Pyne v. R. R. Co.*, 54-226.

Sect. 1307; running special trains over railroad by construction company is operating railroad within the section; *M'Knight v. Ia. & M. R. R. Constr. Co.*, 43-409.

Sect. 1307; railroad company liable for the tort of a brakeman, committed in removing a trespasser from the train, be the act negligent, wilful or criminal; *Marion v. R'y Co.*, 64-672.

Sect. 1307; employe of railroad company; foreman of a crew with power to direct the men under him in their work and hire and discharge them, is a co-employe of those men within the section; *Houser v. R. R. Co.*, 60-233.

Sect. 1307; a member of a construction gang on a railroad, by his duty required to go and ride upon and work on and about the cars and track, injured by the negligence of a co-employe, in throwing a heavy stone upon his hand while placing stones under the end of ties, not within the statute; *Matson v. R'y Co.*, 68-24.

Sect. 1307; engine wiper is not an employe connected with the use and operation of a railroad within the statute; *Malone v. R'y Co.*, 61-328.

Sect. 1307; one employed to wipe engines, open and close the doors of an engine house and remove snow from the vicinity is not engaged in the operation of a railroad, within the statute; *Malone v. R'y Co.*, 61-328; *S. C.*, 65-419.

Sect. 1307; car repairer employed to repair cars on the track, without any duty as to cars in motion, save to ride thereon to places where his services are required, is not engaged in the operation of a railway within the statute; *Foley v. R'y Co.*, 64-650.

Sect. 1307; see §§ 1278, 1307, ante.

Sect. 1306; contract of common carrier limiting common law liability, or consideration of special rates and pass over road; void; *Brush v. S., A. & D. R. R. Co.*, 43-555; *M'Coy v. K. & D. M. R. R. Co.*, 44-427; *M'Daniel v. C. & N. W. R. R. Co.*, 24-412.

Sect. 1306; regulation of railroad company that no valuable live stock shall be received for shipment until a contract is signed, by the owner, releasing the company from all liability for injury above the value ordinary stock, is void; *M'Cune v. R. R. Co.*, 52-601.

Sect. 1309; providing that a judgment against any railway corporation for any injury to person or property shall be a lien superior to the lien of mortgage or trust deed, executed since July 4, 1862, is not unconstitutional, as being special legislation; *Trust Co. v. Sloan*, 65-657.

Sect. 1309; making judgments for personal injuries prior to the lien of mortgages and

- trust deeds executed by railroad companies, does not embrace claims for such injuries not reduced to judgment; *R. R. Co. v. Verry*, **48-461**; *White v. R. R. Co.*, **52-101**.
- Sect. 1310; "transfer," as used, refers to act of removing freight, passenger and express matter, covering removal of cars with their burdens from one to another railroad as well as from cars of one to another company; *Council Bluffs v. Kas. C. etc. R. R. Co.*, **45-346**.
- Sect. 1310-6, requiring railroad companies connecting with Union Pacific R'y to transfer freight, express matter and passengers at Council Bluffs, unconstitutional; *Council Bluffs v. Kas. C. etc. Co.*, **45-351**.
- Sect. 1317, providing for the assessment of railroad property in March of each year, is not in conflict with § 812, as to the assessment of real estate in Jan. of each alternate year; *Cent. R'y Co. v. Supervisors*, **67-200**.
- Sect. 1328, as to making telegraph message known by operator, has no application to the case of use by a party to prove contract made by him; court may order production; *Woods v. Miller*, **55-169**.
- Sect. 1332-4, do not require a proceeding for support of an illegitimate pauper child against the putative father before proceeding against the mother; *M'Andrew v. Madison Co.*, **67-56**.
- Sect. 1352; as to the settlement and support of the poor, embraces one who is insane and a county charge; *Scott Co. v. Polk Co.*, **61-618**.
- Sect. 1357; notice that a pauper has become a charge in a county other than that of his settlement must be given on authority of township trustees or board of supervisors to prevent the pauper from gaining a settlement in the county where he is, or to bind the county of his settlement to remove him or pay for his support after new settlement acquired; *Scott Co. v. Polk Co.*, **61-618**.
- Sect. 1357, 1359; on notice that a county will hold another responsible for expenses incurred about the support of a pauper, and neglect of the county notified to deny the pauper's settlement and refuse to be liable, the latter county is not estopped to deny the pauper's settlement in action to recover for his support; *Winneshiek Co. v. Alamakee Co.*, **62-560**.
- Sect. 1361; the words "medical attendance," in reference to care of pauper, may include nursing and watching; the compensation for caring for sick and helpless pauper not limited to \$2 per week; *Scott v. Winneshiek Co.*, **52-580**.
- Sect. 1361; overseer of poor appointed for a city, such overseer has exclusive control of the poor of that city; township trustees have like control of the poor in township outside of city; county not liable for aid to city pauper in such case, given on order of township trustees; *Hoyt v. Black H. Co.*, **59-185**.
- Sect. 1361; township trustees having contracted for relief of poor persons not sent to poor house, supervisors may not arbitrarily limit amount to be paid; *Hunter v. Jasper Co.*, **40-570**.
- Sect. 1364-8; township trustees having ordered medical aid to pauper, must forthwith report to supervisors; herein failing the aid may be continued and the county will be liable to the physician; but the trustees will be liable over to the county for damages for continued aid; *Mansfield v. Sac Co.*, **60-14**.
- Sect. 1366; county can not be required to pay for aid furnished paupers unless the bills be certified "correct," under this section; *Sloan v. Webster Co.*, **61-740**.
- Sect. 1368, see §§ 1364-8, ante.
- Sect. 1370; in view of this section, the poor farm is deemed appurtenant to poor house; *State v. Platner*, **43-142**.
- Sect. 1381, amended by Stat. 1870, ch. 149, has the effect to empower counties, having a population of 33,000 or more, to levy a pauper tax of 1½ mills on the dollar, in the event that the ordinary revenue proves insufficient for the support of the poor; it does not take away the power to levy a tax of one mill, for the same purpose; *Lucas Co. v. R'y Co.*, **67-542**.

- Sect. 1433; the term "relatives," as used with reference to liability for maintenance of a patient in the insane asylum, means only those who are bound by law to support such person; ex. gr., father not bound to support adult child; *Monroe Co. v. Teller*, 51-672.
- Sect. 1433; a county has no lien, without judgment, on realty of an insane person, for expense incurred on account of such person in the hospital; *Thode v. Spofford*, 65-302.
- Sect. 1434, one who, after attaining the age of nine years, becomes, in common speech, "idiotic" is within the statute providing for the care of the insane; *Speedling v. Worth Co.*, 68-153.
- Sect. 1435; visiting committee at insane hospital has no power to commit witness refusing to testify for contempt; *Brown v. Davidson*, 59-463.
- Sect. 1449; that plaintiff's fence is defective at one point is no defense to an action for cattle trespassing, whose entry was made through a defect of defendant's fence at a point where plaintiff maintained a lawful fence; *Noble v. Chase*, 60-265.
- Sect. 1454; township trustees have no exclusive jurisdiction to determine whether distrainer has a lawful fence; *Syford v. Shriver*, 61-157.
- Sect. 1464; a householder may take up, as an estray, a broken animal running on high way; *Knudson v. Gleson*, 38-236.
- Sect. 1490, fences; complaint of insufficiency of partition fence need not be written; *Tubbs v. Ogden*, 46-135.
- Sect. 1490-1, fence viewers are not the sole judges of the sufficiency of a fence; in action for damages by trespass by cattle the fact provable like any other fact; *Noble v. Chase*, 60-264.
- Sect. 1490-2; and Stat., 1876, ch. 106, § 2; decision of fence viewers within jurisdiction conclusive; they have jurisdiction as to sufficiency and value of hedge; *M'Keever v. Jenks*, 59-303.
- Sect. 1491, fences; adjudication as to sufficiency must be on personal inspection, which may be made by viewers separately. The adjudication must be by trustees sitting as a board. The adjudication need not be written; *Tubbs v. Ogden*, 46-135.
- Sect. 1492; fence viewers have jurisdiction only in controversy, between owners, as to partition fence; *Peschongs v. Mueller*, 50-238; *Anderson v. Cox*, 54-579.
- Sect. 1492; land owner not liable for non compliance with requirements of fence viewers save after written notice of their meeting to take action; *Lockhart v. Wessels*, 46-82.
- Sect. 1495; land is used in common when the use does not require an inclosure; *Syas v. Peck*, 58-257.
- Sect. 1496, premises separated only by a hedge insufficient to turn stock considered as inclosed in common; *Miner v. Bennett*, 45-638.
- Sect. 1498; whether a fence is a partition fence depends, altogether, upon the facts of the case; *Card v. Dale*, 67-553.
- Sect. 1507, describing a lawful fence of farmers and land owners, does not determine the character of a railroad fence; *Lee v. R'y Co.*, 66-133.
- Sect. 1508, not inconsistent with the rule that, where the herd law is in force, one cultivating a farm to raise crops can not be required to build and maintain one-half of a partition fence between his farm and that of adjoining farm which is inclosed; *Syas v. Peck*, 58-259.
- Sect. 1523-59; as to intoxicating liquors; this chapter is not repealed by Stat., 1880, ch. 75, except, possibly, so far as necessary to allow sales, by registered apothecaries, of intoxicating liquors for medicines; *State v. Mercer*, 58-183.
- Sect. 1526; manufacturer of intoxicating liquors no right to sell it in state for mechanical, medicinal, culinary or sacramental purposes without license from supervisors; *Becker v. Belten*, 39-670.
- Sect. 1527, as to permits to sell intoxicating liquors, not repealed by Statute of 1882; *Darling v. Boesch*, 67-707.

Sect. 1535; district court has jurisdiction to revoke permit, granted by supervisors, to sell intoxicating liquors upon cause shown; the informant may proceed in the name of the state, the case may be heard without a jury and remedy is by appeal, not certiorari; *State v. Schmidt*, 65-557.

Sect. 1537; statute so far directory as to authorize return of monthly sales of intoxicating liquors, by authorized vendor, at any time before action for recovery of penalty; *Abbott v. Sartori*, 57-659.

Sect. 1537, amended by Stat., 1884, ch. 143, § 8; failure to make return of sales of intoxicating liquors, by one who has permit to sell, on the last Saturday of each month or within five days thereafter, creates a liability on the bond given; *State v. M'Eutree*, 68-382.

Sect. 1539, applies to all persons selling intoxicating liquor to minor or to person in habit of intoxication; *Cobleigh v. M'Bride*, 45-120.

Sect. 1539; within the prohibition is sale to minor though seller not know he was a minor. In action for benefit of school fund, petition need not allege seller's knowledge of minority; *Jamison v. Burton*, 43-286.

Sect. 1539; any citizen of the county may institute action for forfeiture to the school fund against one selling to one in habit of intoxication or giving to one intoxicated, and, knowledge by vendor of the person's habit or condition not requisite; *Church v. Higham*, 44-483.

Sect. 1539; competent to inquire into relation of witness toward parties, but, not to inquire of reason for prosecuting suit; *Cobleigh v. M'Bride*, 45-119.

Sect. 1539; judgment for damages for selling liquor to minor not lien on the premises owned by a third person not knowing of or assenting to such sale; *Cobleigh v. M'Bride*, 45-117.

Sect. 1539; action for damages occasioned by sale of beer not maintainable, unless the sale violated this section; *Myers v. Conway*, 55-167.

Sect. 1539, 1557; wine and beer are included in term intoxicating liquors, for sale of which a right of action is conferred; *Jewett v. Wanshura*, 43-575.

Sect. 1540; one may be found guilty of the first offense of unlawful sale of intoxicating liquors on an indictment charging a third offense; *State v. Gaffeny*, 66-263.

Sect. 1542; information charging one with keeping intoxicating liquors "for the purpose of sale," sufficient; *State v. Mohr*, 53-262.

Sect. 1542-3; the crimes of keeping for sale and selling intoxicating liquors, as described in these sections, are distinct crimes; an acquittal under the first does not bar a subsequent prosecution under the latter; *State v. Harris*, 64-288.

Sect. 1543 (Rev., 1860, § 1564); owner of premises leasing for lawful purpose, not guilty of offense if intoxicating liquors sold there in violation of law, not affirmatively thereto assenting; mere failure to prevent not make liable; *State v. Ballingall*, 42-88; see *State v. Abrahams*, 6-117.

Sect. 1543, nuisance; charged with nuisance under § 1543, for keeping a place for the unlawful sale of intoxicants; one who kept such liquors for a lawful purpose only, is not liable on account of unlawful sales thereof made by his clerk; the unlawful intent is an essential ingredient of the crime; *State v. Hayes*, 67-28.

Sect. 1544; information for a search warrant for the seizure of liquors owned or kept with unlawful intent must charge some specific person as the owner or keeper thereof with the illegal intent; *State v. Intox. L.*, 64-301; see *State v. Harris*, 36-137.

Sect. 1544; the justice determines whether the informant, for search warrant under liquor law, is or is not a credible resident; but, the warrant need not state that he is such; *State v. Thompson*, 44-400.

Sect. 1550; term "liens" as employed, does not include the lien of a judgment; if judgment be in favor of one selling intoxicating liquors it can not be pleaded, in another action, that the judgment is void because the subject matter of the action comes within the prohibition of the statute; *Smith v. Leddy*, 50-114.

Sect. 1550; the word "securities," as used, embraces promissory notes; *Taylor v. Pickett*, 52-471; *Quigley v. Duffey*, 52-612.

Sect. 1550; actions for the recovery of money paid for intoxicating liquors not barred until five years from payment; *Woodward v. Squires*, 41-678.

Sect. 1550; action on note by indorsee; note shown given for intoxicating liquor; onus on plaintiff to show he took for value without notice; *Nat. B'k v. Nelson*, 41-565.

Sect. 1550; agent of dealer in another state, taking order for intoxicating liquors. subject to approval or disapproval of principal; contract of sister state, not within the section; *Engs v. Priest*, 65-233; see Rev., 1860, § 1571, ante.

Sect. 1551; a peace officer only can render a county liable for services of an attorney rendered, at officer's request, in prosecution for violating liquor law; *Blair v. Du-buque Co.*, 27-182; *Foster v. Clinton Co.*, 51-545.

Sect. 1551; constable appointed by J. P. to assist peace officer to seize liquors not authorized to select attorney to prosecute case under liquor law; *Foster v. Clinton Co.*, 51-545.

Sect. 1554; as to giving away intoxicating liquor for unlawful purposes; applies to licensed pharmacists; *State v. Harris*, 64-291.

Sect. 1555; defining intoxicating liquors; must be regarded as a police regulation and not as a regulation of commerce; *State v. Stucker*, 58-496. (r.)

(r.) *License Cas.*, 5 How., 504; *Ward v. M'd*, 12 Wall., 418; *Welton v. Mo.*, 91 U. S., 275.

Sect. 1556; a physician who professionally treats one who is injured, while intoxicated, does not "take charge of and provide for" such person to authorize recovery therefor, from one selling liquor, the cause of the intoxication; *Sansom v. Greenough*, 55-128.

Sect. 1557; action by wife, for damages by sale of intoxicants, not maintainable because of threats or vulgarity directed to the wife not resulting in impairment of her health; and, such threats and conduct, not being such as to cause actual injury, not admissible as basis for exemplary damages; *Calloway v. Laydon*, 47-458.

Sect. 1557; recovery by wife for injury by sale of intoxicants to husband without proof of fact of marriage; *Kearney v. Fitzgerald*, 43-582.

Sect. 1557; under this provision, exemplary damages may be assessed in every case where there has been a wilful violation of the statute which has occasioned an injury for which a right of action is given by the statute; *Fox v. Wunderlick*, 64-191.

Sect. 1557; lien of judgment for damages for sale of intoxicating liquors not take precedence of prior lien of mortgage; *Goodenough v. M'Cord*, 44-660.

Sect. 1557; see §§ 1530, 1557, ante.

Sect. 1557-8; unlawful sale of liquors; wife may join the seller and owner of property in same action; *State v. Hiney*, 53-90.

Sect. 1558, to establish a lien on the building in which intoxicating liquors are unlawfully sold the consent of the owner to the sale need not be shown by any positive or affirmative act; it may be inferred from circumstances; *Loan v. Etzell*, 62-431.

Sect. 1558; before premises leased for the sale of intoxicants therein can be sold, under a fine or judgment, it must be shown that the owner had knowledge of and consented to the sales complained of and knowledge of the particular facts making such sales unlawful; *Myers v. Kirk*, 64-30.

Sect. 1558; judgment for damages by sale of liquor a lien on premises in part occupied as homestead; court should specifically fix the part to which lien attaches; *Engle-ken v. Webber*, 47-561.

Sect. 1713, 1797; school districts to conform to boundaries of civil township, save as to independent districts, which may include different townships, or parts thereof and in adjoining counties; *Dist. Towns. v. Ind. Towns.*, 41-32.

Sect. 1715, provision for division of assets where school district is divided; contemplates an arbitration under §§ 3416-31, the award having force and effect as a verdict and the court in its judgment must follow the award; *Dist. Towns. v. Ind. Dist.*, 60-142.

- Sect. 1715; circuit court has jurisdiction, in equity, of action to set aside award of arbitrators for division of assets between district townships; *Dist. T. v. Dist. T.*, 54-288.
- Sect. 1715; mandamus would, perhaps, lie to compel the appointment of arbitrators to divide the assets between a district township from which an independent school district has been carved; *Case v. Blood*, 68-487.
- Sect. 1715, 1820; these sections do not apply to a claim of one district school township against another, accruing after the division of the debtor township into independent districts; *Dist. Towns. v. Dist. Towns.*, 52-79.
- Sect. 1717; does not authorize electors of district township to discharge debtor to township without consideration; *Dist. Towns. v. Thomas*, 59-51.
- Sect. 1717, 1753; electors of school district may authorize the use of school house for religious purposes, *Davis v. Roget*, 50-14.
- Sect. 1723; school district may contract that in delivering a school house the contractor shall deliver it "free from liens or claims of every kind," and the bond providing that the contractor shall "pay all claims" etc., material men may, in default of payment, have an action on the bond; *Baker v. Bryan*, 64-565; *Lamb v. Bryan*, 64-568.
- Sect. 1723, 1729; directors of district township can not, without vote of electors, purchase lightning rods for school houses and give township obligations therefor; *Monticello Bk. v. Dist. Towns.*, 51-332; see *Manning v. Dist. Towns.*, 28-332; *Wolf v. Ind. Sch. Dist.*, 51-434.
- Sect. 1724; the power conferred, by this section, to fix the site of each school house, includes the power to change the site of a school house, whenever, in the judgment of the directors, it is desirable; *Atkinson v. Hutchinson*, 68-162; *Vance v. Wilton*, 23-408.
- Sect. 1727; schools; district board of directors may provide a school for less than 24 weeks in the year, with the consent of the county superintendent. It is not essential to the validity of their action that such consent be first given; *Herrington v. Dist. Towns.*, 47-14.
- Sect. 1734; duties imposed on school directors as to discharge of teachers judicial; *Smith v. Dist. Towns.*, 42-525.
- Sect. 1734; the remedy to school teacher wrongfully discharged by board of directors, for incompetency, is by appeal; he can not, until after appeal, maintain action as for breach of contract; *Kirkpatrick v. Ind. Sch. Dist.*, 53-586.
- Sect. 1734; in an action, by a public school teacher, for damages for wrongful discharge the finding of the state superintendent, on appeal, is conclusive on the district; *Park v. Ind. Sch. Dist.*, 65-213.
- Sect. 1753; confers no power on board of directors of district township to contract for employment of teacher; *Gambrell v. Dist. T.*, 54-418.
- Sect. 1753, §§ 1717, 1753, ante.
- Sect. 1764; school teachers have a personal option as to the use of the bible in their schools, restricted only with the condition that no pupil shall be required to read it against the wish of his parent or guardian; the section is not unconstitutional; *Moore v. Monroe*, 64-368.
- Sect. 1766; county superintendent can not recover for services in examining teachers, save at times prescribed; *Farrell v. Webster Co.*, 49-246.
- Sect. 1776; sworn statement of county superintendent as to time occupied in duty not conclusive on board of supervisors; *Bean v. Board of Supervisors*, 51-54.
- Sect. 1778; as to time and mode of levying school tax directory; failure of board of supervisors to levy the same, in the prescribed time, is not fatal; *Perrin v. Benson*, 49-326.
- Sect. 1785; payment by county treasurer of funds of district township to its treasurer without warrant drawn and countersigned by township officers will not render him liable for deficit in accounts of township treasurer not proximately resulting from the irregularity; *Dist. T. v. Bowman*, 55-132.

- Sect. 1798; provides for detaching territory only when both townships are organized as district townships each governed by a board of directors with jurisdiction over the whole territory; *Indep. Dist. v. Durland*, 45-55.
- Sect. 1800; school districts; extension of city or town limits does not have the effect to enlarge the school district existing in such city or town, previous to the extension of its limits; *State v. Ind. Sch. Dist.*, 46-426.
- Sect. 1820; on division of school district; district directors have exclusive jurisdiction to divide assets; no collateral attack; *Ind. Sch. Dist. v. Ind. Sch. Dist.*, 43-445.
- Sect. 1829, 1835; when the jurisdiction and power of school directors is brought in question, the remedy by appeal to the county superintendent is not exclusive; an original action is maintainable in court; *Perkins v. Bd. Direct.*, 56-478.
- Sect. 1867; payment of interest or principal of school fund loans to auditor unauthorized; *Mahaska Co. v. Searle*, 44-493.
- Sect. 1871; board of supervisors may make reasonable rules as to loaning of school fund; as that loans shall be only to residents of county; *Emmet Co. v. Skinner*, 48-245.
- Sect. 1873; see Stat., 1880, ch. 12, post.
- Sect. 1920; prohibiting perpetuities; lease of railroad for 999 years with annual rent reserved from gross earnings, not preventing sale of the fee, or sale or assignment of the lease, or both, not within the statute; *Todhunter v. R. R. Co.*, 58-206.
- Sect. 1922; requiring conditional sales to be written, acknowledged and recorded, not apply to sales perfected before statute in force; *Knoulton v. Redenbaugh*, 40-115; *Moseley v. Shattuck*, 43-544.
- Sect. 1922, does not declare conditional sale or contract unrecorded void between parties; but, only that it shall not be valid as to creditor or purchaser without notice; *Warner v. Jameson*, 52-72.
- Sect. 1922; bill of sale recorded two months after sale, not notice of its conditions to purchaser from vendee in possession; *Pash v. Weston*, 52-676.
- Sect. 1922; so long as an article sold on condition is in the carrier's control with freightage unpaid and subject to stoppage in transitu it is not in the actual possession of vendee; *Warner v. Johnson*, 65-128.
- Sect. 1922; delivery of personality for thirty days and if satisfactory sale to be consummated; not conditional sale, subjecting property to intending vendee's creditors; *Mowbray v. Cady*, 40-606.
- Sect. 1923 (Rev., 1860, § 2201); stat. frauds; "existing creditors" not limited to creditors, when sale made; includes creditors before possession of personality changed, bill of sale recorded or notice given; *Fox v. Edwards*, 38-216.
- Sect. 1923, the words "without notice," in this section, apply to existing creditors as well as to subsequent purchasers; wherefor, an attachment levied upon personality after the execution but before the filing for record of a mortgage, by creditors without actual knowledge, creates a lien superior to the mortgage; *Bacon v. Thompson*, 60-285, overruling *Kessey v. M'Henry*, 54-187.
- Sect. 1923; all this statute requires is that there shall be such a change of possession as shall give, to parties dealing with vendor or vendee, notice of the transaction; *Deere v. Needles*, 65-105.
- Sect. 1923; statute of frauds; provisions of this section not applicable to the assignment of a chose in action by the holders of possession of a right only; *Howe v. Jones*, 57-138.
- Sect. 1923, statute of frauds, has no application to a sale of personal property while in the actual possession of a third person, who retains the possession; *Thomas v. Hillhouse*, 17-70, *Sansee v. Wilson*, 17-582; *Case v. Burrows*, 54-683; *Campbell v. Hamilton*, 63-294.
- Sect. 1923, does not apply to a case where personal property sold is not in the actual possession of vendor at the time of sale; it applies to the case of a third person who retains possession after sale as he had it before; *Case v. Burrows*, 54-683.

Sect. 1923; statute of frauds; parol assignment of chose in action, upon payment therefor, not within the statute; *Howe v. Jones*, 57-139.

Sect. 1923; sale of chattels, with delivery and possession to vendee, may be valid though not generally known or evidenced by recorded writing; *Deere v. Needles*, 65-105.

Sect. 1923, grain in possession; sale with part payment and agreement for future delivery; statement to another sale made; no sale against existing creditor without notice; *M'Kay v. Clapp*, 47-418.

Sect. 1923; sale of corn standing in field; vendee, to protect against creditors, must visibly assume possession; as by harvesting or taking charge or control of the field, or by recording instrument evidencing sale; *Smith v. Champney*, 50-175.

Sect. 1923; possession of personal property is to be determined by this rule; when the owner exercises the control of a thing, in the manner and to the extent usual in cases of property of like character, and holds possession of it to the extent to which it is capable of being possessed, according to the ordinary manner of using and handling such things, it is to be regarded as in his legal possession; *Pope v. Cheney*, 68-565.

Sect. 1925, expressly authorizes vendor's possession of personal property, for his use, after sale by bill of sale recorded; such possession is no badge of fraud; *Jordan v. Lendrum*, 55-482.

Sect. 1927; parties may stipulate, in a mortgage of chattels, that the right of possession shall remain in the mortgagor until the conditions of the mortgage are broken; *Goldsmith v. Willson*, 67-668.

Sect. 1938, 2013, 3102, 3321; right of possession of land, secured to mortgagor until redemption period expired, in absence of stipulation to contrary; *Mills v. Heaton*, 52-217. (s.)

(s.) Discarded, as authority, *Tallman v. Ely*, 6 Wis., 244; *Gillett v. Eaton*, 6 Wis., 30; *Hennessey v. Farrell*, 20 Wis., 42.

Sect. 1940, inhibiting enforcement of vendor's lien after deed made by vendee, not apply to antecedent sales; *Jordan v. Wimer*, 45-67.

Sect. 1940; as between vendor and vendee, vendee's mortgage does not constitute a conveyance which will deprive vendor of his lien for purchase money; such lien attaches to vendee's equity of redemption; *Thusley v. Tinsley*, 52-16.

Sect. 1940; vendor of land who does not reserve a lien for purchase money unpaid, by recorded instrument, has no lien after conveyance by his vendee, though purchaser had notice; *Rotch v. Hussey*, 52-695.

Sect. 1940; vendee's contract for the sale of real estate is not a conveyance such as will defeat his vendor's lien for purchase money; *Noyes v. Kramer*, 54-24.

Sect. 1941; unrecorded deed in evidence casts burden on subsequent purchaser, from same grantor, to show valuable consideration and want of notice. *Nolan v. Grant*, 53-393.

Sect. 1944, providing that the indexing of instrument by recorder, after filing for record, shall constitute constructive notice of grantee's rights, contemplates that the instrument shall remain in the recorder's office until it is recorded; *Yerger v. Barz*, 56-70.

Sect. 1950, the county auditor's plat book, is not evidence to aid the defective description in a deed; *Heinrichs v. Terrell*, 65-29.

Sect. 1964; officer liable for false certificate of acknowledgment only when he acts "knowingly" as well as negligently; *Scotten v. Fegan*, 62-237.

Sect. 1967, to cure defective acknowledgments and give validity to recorded deeds and mortgages as to third persons; not repugnant to constitution in cases where vested rights are not impaired; *Ferguson v. Williams*, 58-718; see *Brinton v. SeEVERS*, 12-389.

Sect. 1976-1987; as to the rights of an occupying claimant of land; claimant can not set up a claim for improvements in an action against him for the possession of the

- land; but, must wait until the question of title is adjudged against him; *Walton v. Gray*, 29-441; *Walton v. Hall*, 29-443; *Fogg v. Holcomb*, 64-628.
- Sect. 1990; neither husband nor wife can vest in the other any portion of the homestead by a deed in which both do not join; *Spoon v. Van Fossen*, 53-496.
- Sect. 1990; conveyance or incumbrance of homestead can only be by joint act of husband and wife, in the same deed; *Barnett v. Mendenhall*, 42-298; *Stinson v. Richardson*, 44-373; *Lunt v. Neeley*, 67-100.
- Sect. 1990; agreement by husband to convey homestead, not concurred in by wife; absolutely void; *Barnett v. Mendenhall*, 42-298.
- Sect. 1990; the want of concurrence, to invalidate a mortgage on a homestead, must, in the absence of fraud or mutual mistake, be apparent on the face of the instrument; *Edgell v. Hagens*, 53-226.
- Sect. 1990; mortgage upon the homestead signed by husband and wife, wife's name appearing only in clause relinquishing dower; invalid as a lien on homestead; *Wilson v. Christopherson*, 53-482.
- Sect. 1990; homestead occupying more land than the law exempts, homestead not selected and platted; mortgage by the husband alone, on any part of the land so occupied, invalid; *Goodrich v. Brown*, 63-248.
- Sect. 1992; entry of land under homestead laws of U. S. constitutes purchase of homestead under this statute; *Green v. Farrar*, 53-420.
- Sect. 1993; agreement, in confession of judgment, to waive protection of exemption laws and permit execution to issue against any property, homestead included, not subject homestead to liability, *Rutt v. Howell*, 50-537.
- Sect. 1993; mortgage executed on homestead and other property; mortgagor selling the other property and part of the homestead can not insist, in proceeding to foreclose, that the other property shall be first exhausted to pay the mortgage debt; *Dilger v. Palmer*, 60-120.
- Sect. 1993; as to contract for sale of homestead under execution for debt, it is not essential that the homestead should be specially described as such or that the conveyance should, in express terms, contain a stipulation that the homestead was conveyed or should be sold; *Waterman v. Baldwin*, 68-261; see *Babcock v. Hoey*, 11-375.
- Sect. 1996; homestead within a town not limited to one-half acre, unless the land embraced has been platted; *M'Daniel v. Mace*, 47-510.
- Sect. 1996; homestead upon a forty acre tract, worth more than \$500; interest of occupant in it and an adjoining forty acre tract but a life estate, worth less than \$500; occupant entitled only to the former as exempt from debt; *Yates v. M'Kibben*, 66-359.
- Sect. 1997; barn or stable used for ordinary purposes in connection with homestead is exempt without regard to value; *Wright v. Ditzler*, 54-626.
- Sect. 1997; temporary use by the owner of one floor of the dwelling house for a store (value not over \$300) and other temporary non user with intent to re-occupy for a dwelling; exemption of the entire building as homestead; *Smith v. Quiggans*, 65-638.
- Sect. 2000-1; sale of homestead to invest in another; proceeds exempt as homestead would have been and reasonable time allowed to make purchase; *State v. Geddis*, 44-538.
- Sect. 2001 (Rev. 1861, § 2280); exchange of homestead; the one newly acquired liable for existing debt for purchase money of old one; *Bills v. Mason*, 42-332.
- Sect. 2002; homestead; the object of a reference, as provided, is not to make selection thereof, but to enable the court to determine whether certain land claimed to be exempt really is so; *White v. Rowley*, 46-683.
- Sect. 2002-5; after it is properly determined that the whole farm, 160 acres, of judgment debtor is exempt as a homestead, being less in value than \$500, the fact it was not platted, as such, prior to levy of execution upon a part of it will not render it liable to sale under such levy; *Green v. Farrar*, 53-428.

- Sect. 2008, means and intends that when the distributive share of surviving husband or wife is "set off" the homestead right becomes extinct; *Burdick v. Kent*, 52-585.
- Sect. 2008; homestead descends to the issue of owner charged with debts enforceable against it had such owner lived; free from all others; *Moninger v. Ramsey*, 48-369.
- Sect. 2013; attornment to mortgagee not valid until foreclosure; and, when the property is sold subject to redemption, until redemption period expired; *Mills v. Hamilton*, 49-109; *Mills v. Heaton*, 52-216.
- Sect. 2013, see §§ 1938, 2013, 3102, 3321, ante.
- Sect. 2014; one who is in possession who is shown to hold possession with the assent of the owner, is, at least, a tenant at will; *Goldsmith v. Wilson*, 68-686.
- Sect. 2015; does not establish a rule for the government of parties in making their contract; it simply fixes a time at which, in the absence of express agreement to the contrary, the lease shall terminate; *Johnson v. Shank*, 67-117.
- Sect. 2015; tenancy ceasing at a time agreed upon, the tenant is not entitled to the thirty days notice provided for by this section; *Grosvenor v. Henry*, 27-209; *Shuver v. Klinkenberg*, 67-546.
- Sect. 2017; landlord's lien attaches upon all property of the tenant, not exempt from execution, used upon the leased premises, for rent of the entire term of lease, so soon as the same is brought on premises; *Martin v. Stearns*; 52-346; see *Garner v. Cutting*, 52-549.
- Sect. 2017, landlord's lien; the section does not require that the property of the tenant shall be used in the prosecution of his business upon the premises to entitle landlord to the lien; use upon the premises during the term is essential; *Van Patten v. Leonard*, 55-524.
- Sect. 2017; the lien given the landlord for the security of his rent is strictly statutory; the statute gives the landlord a lien upon all personal property, of the tenant, which has been used upon the leased premises during the term; this is the extent of the remedy; it does not extend to property of a third person used upon the premises; *Perry v. Waggoner*, 68-405.
- Sect. 2018; request by attorney of guarantor to send copy of indemnity bond with authority to sue principal and sureties; not such demand that suit be brought as will discharge guarantor; *Sew. Mach. Co. v. M'Ginnis*, 45-545.
- Sect. 2019, 4860; duty to erect party wall sufficient to support building of which it forms part; but not such an one as adjoining owner may choose to build; *Gilbert v. Woodruff*, 40-321. (*t.*)
- (*t.*) *Cutter v. Williams*, 3 Allen, 196.
- Sect. 2081; this section does not apply to a highway used by the public for over ten years before Code enacted; *Baldwin v. Herbst*, 54-171.
- Sect. 2078; under this section, unless a different rate of interest is expressed in the judgment or decree, but six per cent. can be collected on it; *Rice v. Hulbert*, 67-726.
- Sect. 2080; usury pleadable as defense, or may be made basis of original and affirmative relief; *Morrison v. Miller*, 46-87.
- Sect. 2082-7; an assignment of the periodical (monthly) royalties payable, as rent, under a coal lease is not an assignment of an open account, but, of a right under a contract; the assignee is bound only by equities which lessee had against assignor before notice of the assignment, not by equities arising brought upon the assignment; *Steele v. Mills*, 68-410.
- Sect. 2086; a railroad passenger's ticket conditioned to be "positively not transferable," is not assignable; *Way v. R'y Co.*, 64-53.
- Sect. 2086-7; the maker of a book account may avail himself of any defense or counter claim against the assignee thereof which he may have against any assignor thereof before suit is commenced thereon; *Reynolds v. Martin*, 51-327.
- Sect. 2086-7; open account assigned with notice to debtor who demands statement of amount due; subsequent settlement with assignor a defense to suit by assignee; *Wing v. Page*, 62-88.

- Sect. 2089; one who is not the payee, but, a stranger to a promissory note when he indorses the same, is, under this section, a guarantor; *Conger v. Babbet*, 67-14.
- Sect. 2105; this section simply dispenses with the actual production of money tendered; *Kuhns v. R'y Co.*, 65-529.
- Sect. 2105; sale of personalty for future delivery; offer in writing expressing a readiness to deliver, made by vendor, will bind vendee, where vendee denies his obligation to accept the goods, although vendor has not the goods ready to deliver and he is not bound to keep perishable goods to have them ready to deliver when vendee chooses to accept; *Holt v. Brown*, 63-323.
- Sect. 2108; the notice a surety may give to creditor to sue, under this section, is a notice to sue upon the contract and not notice to sue the principal debtor only; notice to sue the principal debtor alone will not discharge the surety; *Moore v. Peterson*, 64-424.
- Sect. 2108-9; holder of promissory note, served with statute notice by surety thereon, must not only direct suit, but must see that suit is actually commenced within time fixed by statute, or the surety will be discharged; *German American Bk. v. Denmire*, 58-138.
- Sect. 2113; the presumption, that a contract, being in writing, imports a consideration, may be overcome by evidence; *Byers v. Harris*, 67-686.
- Sect. 2115; mortgage of chattels for benefit of some creditors; same day general assignment for benefit of all creditors; one transaction and void; *Van Patten v. Burr*, 52-521.
- Sect. 2115; mortgage of a stock of goods, to secure certain creditors, not covering all of debtor's property and not made without hope of redemption; not a general assignment void for preferences; *Jaffray v. Greenbaum*, 64-495.
- Sect. 2115; a mortgage by a debtor does not operate as a general assignment if it does not include all the property of the mortgagor, none of the parties intending, at the time of its execution, that it should operate as an assignment; *Carson v. Byers*, 67-611.
- Sect. 2115, 2128; of assignments for creditors; the assignee has the power, and, it is his duty, to take possession of the assigned property and he is subject to the order and direction of the court; *Nat. Bk. v. Hanirick*, 67-585.
- Sect. 2120; creditor failing to file claim within three months of first publication of notice of assignment not entitled to share pro rata in dividend; *In re assignment of Holt*, 45-302.
- Sect. 2120; assignment for benefit of creditors; claim against the estate not filed within eighteen months after the first publication of notice by the assignee and more than fifteen months had elapsed since the assignee made report of creditors; claimant can not participate in the benefit of the assignment; *Holt, in re*, 45-301; *M'Kindley v. Nourse*, 67-120.
- Sect. 2121; in a proceeding for the trial of exceptions by a party in interest to a claim filed against an insolvent's estate the plaintiff can not be required to give security for costs, although a non resident; *Meyer v. Evans*, 66-181.
- Sect. 2126; creates a positive bar if the claim of a creditor is not exhibited or filed with the assignee, in a general assignment, or the court within the time provided; *M'Kindley v. Nourse*, 67-121.
- Sect. 2126; conceding the statute does not require a claim against the estate assigned for the benefit of creditors to be filed with the assignee, still the claim exhibited to him must be one against the estate; an action of replevin to recover property from the assignee is not a such a claim; *M'Kindley v. Nourse*, 67-120.
- Sect. 2130; breaking of prairie is not an improvement on land to give a mechanic's lien; *Brown v. Wyman*, 56-454.
- Sect. 2131, amended by Stat., 1874, ch. 49, § 1; laborer claiming mechanic's lien complies with statute by filing settlement with sub-contractor within thirty days, allowed for filing lien, with clerk of district court; *Bundy v. R. R. Co.*, 49-208.

- Sect. 2137; mechanic's lien has a priority over mortgage recorded within ninety days of last item; *Lamb v. Hanneman*, 40-43.
- Sect. 2141 (Rev., 1860, § 1855), mechanic's lien for materials for improvement or enlargement of building not take priority over existing mortgage; *Equit. Life Ins. Co. v. Slye*, 45-616.
- Sect. 2171; warehouse receipt issued upon warehouseman's own grain, as collateral security merely; invalid; *Sexton v. Graham*, 53-195.
- Sect. 2171; a weighmaster's, or scale, ticket with the word "stored" written on its face, is not a warehouse receipt within the statute; *Cathcart v. Snow*, 64-588.
- Sect. 2177; does not confer a lien on horse, for its care and feed, upon livery stable keeper; *M'Donald v. Bennett*, 45-458.
- Sect. 2178; that mortgages may be foreclosed in county where the property is situated, permissive only; action to foreclose may be in county where the note is payable, although the property is not located therein, and, although the mortgage was executed while Rev., 1860 was in force; *Ins. Co. v. Gleason*, 56-49; *Loan and T. Co. v. Day*, 63-460.
- Sect. 2201; a polygamous marriage is absolutely void, and, no rights of the other party are affected thereby; *Drummond v. Irish*, 53-42; *Carpenter v. Smith*, 24-202.
- Sect. 2202; as to creditors of husband, becoming such since section in force; money of the wife given to husband to use for her and to account for profits and principal, invested in real estate did not vest in him, but became a debt and good consideration for deed of land to her from him; *Jones v. Brandt*, 59-336.
- Sect. 2203; under this section, the property of the wife can not be taken in payment of husband's debt, even though it be reduced to the possession of the husband and the creditor have no notice of the wife's interest; *Schmidt v. Holtz*, 44-449.
- Sect. 2203; does not take away the power of husband and wife to contract as to the amount to be awarded the wife for alimony on divorce, as recognized by the court; *Martin v. Martin*, 65-256.
- Sect. 2203; contract between husband and wife each relinquishing right of dower in the other's lands void; *Linton v. Crosby*, 54-480.
- Sect. 2204, 2214; wife's money by her consent used by husband, in payment of ordinary family expenses without agreement to repay; no recovery from his estate; *Courtright v. Courtright*, 53-59.
- Sect. 2207; as to the right to sell property to pay debts by husband or wife abandoned by the other, is not designed to affect the wife's agency at common law; *Rawson v. Spangler*, 62-61.
- Sect. 2207; wife, having children to support, deserted by her husband may sell personality of no use in supporting the family, as against the husband's creditors, before her money and provisions are exhausted; *Rawson v. Shangler*, 62-61.
- Sect. 2211; husband is entitled to the labor and assistance of wife in discharge of duties and obligations growing out of marital relation; *Mewhirter v. Hatten*, 42-291.
- Sect. 2211; the "wages of the wife's personal labor," for which she may maintain action in her own name, are her earnings while employed otherwise than by her husband, in an occupation of her own; *Mewhirter v. Hatten*, 42-291.
- Sect. 2211; while a married woman has a right to receive the wages of her personal labor and maintain an action therefor, she can not recover for loss of time occasioned by an injury, if her occupation is that of a mere housewife in the family of a husband; *Lyle v. Gray*, 47-153; *Fleming v. Shenandoah*, 67-508.
- Sect. 2214; is treated as if it provided that both husband and wife shall be personally liable for family expenses; *Jones v. Glass*, 48-345; the object and purpose of the section is that the property and means of both shall be devoted to the support of the family, so far as necessary for that purpose; *Devendorf v. Emerson*, 66-690.
- Sect. 2214; the statute creates a right and liability; it points out no remedy; *Frost v. Parker*, 65-181.
- Sect. 2214; the wife is liable for an article of family expense, for which the husband

- alone gave his note on which judgment is rendered, to the assignee of the judgment until the statute bars the judgment; *Frost v. Parker*, 65-182.
- Sect. 2214; to constitute a family expense an article must be bought for family use and be actually used in the family; *Fitzgerald v. M'Carty*, 55-705.
- Sect. 2214; no lien acquired, on wife's separate property, by loan to husband to pay family expenses, she not assenting and account for such expenses not assigned to lender; *Sherman v. King*, 51-183.
- Sect. 2214 (Rev., 1860, § 2507); a piano is within contemplation as a family expense; vendor to the husband has his action to charge separate property of wife; *Smedley v. Felt*, 41-590.
- Sect. 2214; reaping machine not a family expense, chargeable on wife's separate property, though used by husband in support of family; *M'Cormick v. Muth*, 49-537.
- Sect. 2222; this section is mandatory; no divorce can legally be granted on an unverified petition; but, the court may require the verification to be made at any time before final hearing and, meanwhile, will have jurisdiction for interlocutory purposes; *Van Duzer v. Van Duzer*, 65-626.
- Sect. 2222; as to trial of divorce case publicly, in open court, by court not complied with by filing referee's report in court and hearing exceptions by court and ruling thereon; *Hobart v. Hobart*, 45-507.
- Sect. 2223; cruel and inhuman treatment by insane wife no cause for divorce; *Wertz v. Wertz*, 43-536.
- Sect. 2223; conviction for felony, as a cause for divorce, must be final and absolute; not appealable; *Vinsant v. Vinsant*, 49-641.
- Sect. 2226; a judge in vacation, after suit for divorce brought and before the appearance term, is not authorized to give judgment for temporary alimony; even on notice to defendant; *Prosser v. Prosser*, 64-380.
- Sect. 2227; providing for attachment in divorce proceeding; not exclusive but cumulative as to the remedy; *Wharton v. Wharton*, 57-607.
- Sect. 2227; and others of the same chapter contain the only provisions relating to attachments in divorce cases; *Smith v. Smith*, 61-141.
- Sect. 2227; in applications for divorce or to annul marriage, attachment authorized by this section may be levied on homestead of the parties; *Daniels v. Morris*, 54-371.
- Sect. 2229; power to modify decrees of divorce as to custody of children not exclusive in the court which rendered decree; *Shaw v. M'Henry*, 52-185.
- Sect. 2231; impotency, insanity or idioy occurring after marriage, no ground for divorce; *Wertz v. Wertz*, 43-535.
- Sect. 2238; this section does not prevent the disaffirmance of minor's contract during minority; it simply limits the time during which it may be made; *Childs v. Dobbins*, 55-206.
- Sect. 2238; reasonable time, within which one acquiring majority may disaffirm contract of infancy, depends on peculiar circumstances of each case; *Green v. Wilding*, 59-631.
- Sect. 2238; on disaffirmance of infant's contract he is required to return only the identical property received and controlled after majority attained; *Hawes v. R'y Co.* 64-320; see *Jenkins v. Jenkins*, 12-109.
- Sect. 2239; prohibiting disaffirmance of minor's contract in certain case, applies to any contract he may make; not limited to the business he follows; *Jaques v. Sax*, 39-309.
- Sect. 2243, 2246, 2250; by the use of the term "guardian of the property," the sections are aptly applied to guardians generally, and to the single case of a guardian for the property only, contemplated in section 2243; *Burger v. Frakes*, 67-462.
- Sect. 2246; surety upon a guardian's ordinary bond not liable for his act in squandering proceeds of the sale of ward's property; *Bunce v. Bunce*, 65-108; see Rev., 1860, § 2548, ante.
- Sect. 2250; modifies the common law rule as to power of guardians over property of

- wards; they may lease lands, loan money and attend to ward's interest under direction of the court; without authority of the court they are liable; *Bates v. Dunham*, 58-310.
- Sect. 2261; sale of wards' realty by referee in partition proceeding; the statute does not provide that the guardian shall give special bonds for the proceeds and the surety upon his guardian's bond are liable therefor; *Hooks v. Evans*, 68-33.
- Sect. 2265 (Rev. 1800, § 2560); affords no protection to one claiming under void guardian's sale; *Rankin v. Miller*, 43-22.
- Sect. 2272; a guardian may be appointed for one who is of unsound mind (§ 45, subd. 6); *Seerley v. Sater*, 68-376.
- Sect. 2307-11; where a guardian of the person and estate of a minor has been duly appointed, such child can not be adopted by a third party without the guardian's consent; *Burger v. Frakes*, 67-462.
- Sect. 2312, has reference only to the probate of will; *Leighton v. Orr*, 44-683.
- Sect. 2312; probate court has jurisdiction to appoint administrator in county where the only interest of decedent is in an action at law; *Murphy v. Creighton*; 45-182.
- Sect. 2312; giving jurisdiction to circuit court of estates of insane persons, does not exclude jurisdiction of the district court of questions of right between insane persons and others; *Flock v. Wyatt*, 49-468.
- Sect. 2312; the adjudication of a claim against an estate is to be deemed a part of the settlement of the estate; *Tillman v. Dowman*, 68-450; see *McCrary v. Deming*, 38-531; *Crane v. Guthrie*, 47-544.
- Sect. 2312, 2315, 2305; it is the duty of the clerk to appoint administrators when the circuit court is not in session; but, when it is in session, that duty devolves on the court; nevertheless, by whomsoever appointed, it is the duty of the clerk to issue the letters of administration; letters issued in term time are not to be presumed to be issued save on appointment of the court; *Cit. Bk. v. Rhutasel*, 67-318.
- Sect. 2313; the circuit court has no authority to hear and determine a matter in probate outside of the country where it belongs; order so made void; *Capper v. Sibley*, 65-755.
- Sect. 2313-4; the circuit court sitting in probate may prescribe the kind of notice to be given of the hearing of any pending matter and the manner of service; *Casey v. Stewart*, 60-162.
- Sect. 2321; the words "bonds relating to probate matters" have relation to proceedings incident to the administration and settlement of estates of decedents, but not to matters of guardianship; hence the court clerk is not authorized to approve a guardianship bond; *Reus v. McCully*, 65-632.
- Sect. 2327; wife competent as subscribing witness to will making her husband a legatee; *Hawkins v. Hawkins*, 54-444.
- Sect. 2337; devisee dying before testator, leaving a widow and brother; the brother is and the widow is not an heir of devisee and the brother takes the legacy; *Blackman v. Wadsworth*, 65-84.
- Sect. 2337, 2454; arguendo; the word "heirs" as used in these sections has the same meaning in each; *Blackman v. Wadsworth*, 65-84.
- Sect. 2340-1; publication of notice of application for probate of will gives full jurisdiction of all parties; *Farrell v. Leighton*, 49-176.
- Sect. 2347; this provision is not to be understood as prohibiting the appointment of a non resident administrator; it simply provides that removal from the state of an administrator creates a vacancy in the place; *R'y Co. v. Gould*, 64-346.
- Sect. 2348-9; a substituted administrator succeeds to all the duties, obligations and powers of the first administrator; *Stewart v. Phenice*, 65-470; see *Shawhan v. Loffer*, 24-230.
- Sect. 2350; this section applies only to persons who take property for a determinate period, at the expiration of which it is to be transferred to the beneficiaries and during which space of time the estate remains unsettled and in the probate court.

- The taker of personality charged with certain duties in respect thereof is not a trustee, within the meaning of the section, required to give bond, but is a legatee; *Perry v. Drury*, 56-60.
- Sect. 2351; this section contemplates as evidence the authenticated record of the probate of a will by a foreign court, showing the will and the action of the court thereon; *Otto v. Doty*, 61-25.
- Sect. 2351 (Rev., 1860, § 2328), will proved and allowed in sister state may be recorded in circuit court of this state; allowance there proves due execution; *Vance v. Anderson*, 39-127.
- Sect. 2353, after probate will may be set aside by original or appellate proceeding, assailing its validity; *Orr v. Leighton*, 44-682; *Kelsey v. Kelsey*, 57-384.
- Sect. 2353; guardian ad litem of minor legatee may interpose question of invalidity of will in action to construe and enforce it; *Kelsey v. Kelsey*, 57-384.
- Sect. 2365; see §§ 2312, 2315, 2365, ante.
- Sect. 2366; stat. directory; failure of executor to give notice of appointment not annul appointment or prevent his discharging duties; *Johnson v. Barker*, 57-33.
- Sect. 2371; descent from husband of property exempt from execution; widow not deprived of her right thereto because no inventory or appraisal made thereof; *Adkinson v. Breeding*, 56-28.
- Sect. 2371; husband and wife, without children, living apart for seven years neither contributing to the support of the other; he not the head of a family for purposes of exemption from execution; *Linton v. Crosby*, 56-387.
- Sect. 2375; widow applying for allowance from late husband's estate bound to show it necessary; *Caldwell v. Caldwell's Est.*, 54-457.
- Sect. 2375, 2377; allowance made for support of widow can only be reduced as to the future; she can not be required to account for any amount expended while the allowance is unquestioned; *Harshman v. Sionaker*, 53-468.
- Sect. 2375, 2377; court may in a proper case, order the payment of money, in instalments for the support of widow and children, instead of setting apart specific property; money not on hand to pay no objection, nor is the right to change allowance; *M' Reynolds' Est.*; 61-586.
- Sect. 2375, 2377, 2418-20; it is not in the power of the administrator, by any agreement, representation or contract, which he may make with a creditor, to deprive the widow of the priority given her by statute; *Dennis, estate of*, 67-112.
- Sect. 2379-80; one summoned to discover assets of one deceased can not plead his discharge, as an adjudication, in an action by the administrator against him for the value of property alleged to have been wrongfully appropriated; *Ivers v. Ivers*, 61-722.
- Sect. 2379-90; a payment of money to the widow, for the support of her family, by one not the administrator (and without authority), will not purge the contempt of disobeying an order of probate to pay the sum to a subsequent administrator; *Wise v. Chaney*, 67-74.
- Sect. 2387, 2391; refer to the interest of the estate as distinguished from that of the wife in lands; her dower interest in not subject to the payment of deceased husband's debts; *Mock v. Watson*, 41-243.
- Sect. 2388; petition of adm'r de bonis non alleging no personalty come to his hand and debts unpaid sufficiently complies with section; *Stanley v. Noble*, 59-667.
- Sect. 2408-10; allowance by adm'r of part of a claim filed against an estate, its entry by clerk and its approval by court no bar to demand for trial for the part not allowed; *Smith v. M'Fadden*, 56-484.
- Sect. 2416; this section applies to all suits and all courts; it contemplates that a suit commenced shall not abate by death of defendant, but, may be prosecuted to judgment; *Caughlin v. Blake*, 55-636.
- Sect. 2421; one may file claim of class 4 with adm'r after 12 months, where validity of claim not established until after time for filing; *Senat v. Finley*, 51-23.

Sect. 2421; slight delay in presenting claim against decedent, if being held by attorney at request of one reasonably believed to speak for adm'r, estate solvent and unsettled and no counter equity arising; equitable relief granted; Pettus v. Farrell, 59-297.

Sect. 2421; that estate is unsettled is not, per se, reason for relief against delay in proving claim; Brownell v. Williams; 54-354; Davis v. Shawhan, 34-01.

Sect. 2421; claim filed in apt time, but not proved up within twelve months; belief that there is "plenty of property to pay the debts" and agreement of administrator to see claimant paid, can not raise an equity to raise the statute bar and bind the estate; Colby v. King, 67-459.

Sect. 2421; personal claim of administrator against estate; neglect to file the same until such period of time that time did not last to enable due notice thereof to be given to adverse parties in interest that they might prepare for trial; claim barred; Clark v. Tallman, 68-374.

Sect. 2435; claim barred under sect. 2421, allowed by adm'r and ordered paid by court; surety on administrator's bond liable for non-payment; bar of stat. no defense; Weber v. Noth, 51-378. (u.)

(u.) Garber v. Comm., 7 Pa. St., 265; People v. White, 11 Ill., 341; Ralston v. Wood, 15 Ill., 159; Williamson v. Howell, 4 Ala., 693; Irwin v. Backus, 25 Cal.; Hobbs v. Middleton, 1 J. J. Marsh., 176; contra Robinson v. Hodge, 117 Mass., 222; Davis v. Shedd, 15 Mass., 7; Gookin v. Sanford, 3 N. H., 491.

Sect. 2436; husband, by will, can not deprive the widow of her share in the personal estate provided for in this section; Ward v. Wolf, 56-466; Linton v. Crosby, 61-294; S. C., 61-404.

Sect. 2436; during the life of the husband the wife has no inchoate right in his personal property, and he may, while in life, make such disposition thereof as he sees fit; Samson v. Samson, 67-290.

Sect. 2440; a sale of bankrupt's land by assignee in bankruptcy is a judicial sale, within the section, to cut off dower; Taylor v. Highberger; 65-135.

Sect. 2440; a sale of real estate by the assignee under a general assignment for the benefit of creditors, under the statute, is such a "judicial sale" as to cut off the wife's right of dower; Stidger v. Evans, 64-93.

Sect. 2441; the guardian of an insane widow can not waive the provision that her distributive share shall be so set off as to include the homestead; Ratcliff v. Davis, 64-469.

Sect. 2440, 2452; interest of a surviving husband or wife, in the estate of the deceased spouse, is not affected by a will unless consent is entered thereto, of record, within six months after notice of the provisions of the will; Baldozier v. Haynes, 57-683; Houston v. Lane, 62-294.

Sect. 2440, 2455-7 descent; intestate leaving neither wife nor child and both parents dead, father dying last leaving a second wife; the latter takes one-sixth of realty left by decedent; Moore v. Weaver, 53-13.

Sect 2443; contemplates the appointment of more than one referee on appraisement of dower. Where more than one are appointed and but one acts the assignment may be set aside on slighter showing than if all participated; Jones v. Jones, 47-339.

Sect 2452; widow's share of late husband's estate includes both personal and real property; husband, by will, can not deprive widow of her share of personalty; Ward v. Wolf, 56-466.

Sect. 2454; the word "children," as used in this stat. of descents, includes illegitimates; Milburn v. Milburn, 60-413; see M'Guire v. Brown, 41-658.

Sect. 2454; widow will not inherit from children of her child who died before the death of her husband; Journell v. Leighton, 49-603; Will of Overdieck, 50-246; see M'Menomy v. M'Menomy, 22-150.

Sect. 2455; intestate leaving no child, surviving husband or wife, taking one-half the estate, holds one-third as dower and one-sixth as heir; Smith v. Zuckmeyer, 53-17.

Sect. 2455; see §§ 2440, 2455-7, ante.

Sect. 2457; one dying intestate both parents dead; his property never became part of his father's estate, his heirs take direct from him; the heirs of deceased sister will take; though the sister was cut off by her father's will; *Lash v. Lash*, 57-83.

Sect. 2457; see §§ 2440, 2455-7, ante.

Sect. 2455-7; will of parent revoked by birth and recognition of illegitimate child; *Milburn v. Milburn*, 60-413.

Sect. 2466; a verdict, with judgment thereon, in favor of a woman and against a defendant since intestate, in an action for seduction, does not conclusively prove that the child, alleged therein to have been the issue of the intercourse, is the child and heir of intestate; *Koon v. Mallett*, 68-208.

Sect. 2466; in the proof of the recognition of an illegitimate, to establish heirship, it is sufficient that the notoriety of the recognition shall appear to have been as wide as circumstances admitted; *Blair v. Howell*, 68-622.

Sect. 2475; requiring proceedings to open administrator's accounts to be commenced within three months, does not apply to cases of mistake or fraud; *Arnold v. Spates*, 65-573.

Sect. 2475; does not require notice of administrator's final report and application for discharge; discharge ordered without notice to those interested may be made; when made it can not be collaterally attacked, but those interested may, for cause, have it set aside, by proceeding timely and properly, *Arnold v. Spates*, 65-572.

Sect. 2475; discharge of adm'r based on receipts of distributees, for amounts found due to each, on final accounting, conclusive on distributees in absence of application to set aside order within three months, non obstante action pending against adm'r and surety, *Diehl v. Miller*, 56-315.

Sect. 2497; one not having a right to benefits of the estate of decedent, prompting him to act for the preservation and increase of value of assets and directing their appropriation and disposition can not sue to remove an administrator, *Ry. Co. v. Gould*, 64-348. (v).

(v) *Swan v. Piquet*, 3 Pick., 433; *White v. Spaulding*, 50 Mich., 22; *R'y Co. v. Peacock*, 56 Ga., 146; *Penniman v. French*, 2 Mass., 140; *Labar v. Nichols*, 23 Mich., 310.

Sect. 2509; providing for foreclosure of mortgage by equitable proceeding, not invalid; *State v. Orwig*, 25-280; *Clough v. Seay*, 49-113.

Sect. 2510; misjoinder of causes of action is waived unless assailed, before defense made, by motion to strike out; *Flynn v. R'y Co.*, 63-503.

Sect. 2510; no other cause of action can be joined with an action to establish a mechanic's lien; wherefor, an action at law being brought against a defendant on a promissory note, and an amendment made, bringing in other parties and seeking to establish and foreclose a mechanic's lien, it was held, on motion, plaintiff must elect on which cause he will stand or the amendment should be stricken; *Sweetzer v. Harwick*, 67-490.

Sect. 2511, an issue of fact in proceeding for divorce may not be submitted to a jury; the adoption of the jury's finding will not cure; *Hobart v. Hobart*, 51-512.

Sect. 2517; action commenced by ordinary proceeding, some issues cognizable in equity others at law; either party may demand jury; issues tried—legal or equitable—first as best dispose of cause; *Morris v. Merritt*, 52-502.

Sect. 2521, not limit remedy of judgment creditor, when record of the judgment is lost or destroyed, to the recovery of a new judgment; *Gammon v. Knudson*, 46-457.

Sect. 2521; simple judgment taken on secured note; a subsequent action to foreclose the mortgage for the payment of the judgment is not an action on a judgment within the section; *Matthews v. Davis*, 61-226.

Sect. 2525; cause of action for a tort survives the death of the wrong doer; *Sheik v. Hobson*, 64-147.

Sect. 2526; libel is a public offense and actionable per se and the law presumes damage to the person libelled; *Call v. Larabee*, 60-215.

Sect. 2527; notice shall be served on legal representative of deceased party when the cause is continued against him; no notice is necessary when the cause is continued in favor of the representative; *Masterson v. Brown*, 51-445.

Sect. 2529, cl. 2; statute of limitations commences to run against an action to enforce mechanic's lien at the expiration of the thirty or ninety days allowed for the filing of claims of sub-contractors and contractors respectively; *Squier v. Parks*, 56-409.

Sect. 2529, cl. 2; action for the recovery of money deposited with the sheriff to pay awards on condemnation of land for railroad right of way is barred in three years from the expiration of thirty days allowed for appeal; *Lower v. Miller*, 66-411.

Sect. 2529, cl. 3; personal action against county treasurer for money collected by virtue of office barred in three years; *Keokuk Co. v. Howard*, 41-11.

Sect. 2529, 2533; limitations run in favor of debtor domiciled in state, cease to run on his becoming non resident and revive at his death; *Savage v. Scott*, 45-133. (w.)

(w.) *Christophers v. Garr*, 6 N. Y., 61; *Teal v. Ayers*, 9 Tex., 588.

Sect. 2530; providing that cause of action shall not be deemed to have accrued until discovery of the fraud, applies only to cases heretofore solely cognizable in chancery; *Gebhard v. Sattler*, 40-155; *Brown v. Brown*, 44-351.

Sect. 2530, applies only to cases heretofore solely cognizable in courts of chancery; *Gebhard v. Sattler*, 40-153; *Brown v. Brown*, 44-349; *Phoenix Ins. Co. v. Dankwardt*, 47-434.

Sect. 2530; to defeat the bar of statute limitations actual fraudulent concealment must be averred and shown; ignorance not suffice; *Dist. Towns. v. French*; 40-602.

Sect. 2530; statute limitations not suspended by mere concealment of property from which judgment may be satisfied; *Humphrey v. Mattoon*, 43-557.

Sect. 2530; sale under trust deed void; operation of statute limitations not suspended until discovery of fraud; *Gebhard v. Sattler*, 40-155.

Sect. 2532; the intent to serve the original notice must be continuous; so, if the notice be not served by the sheriff, but returned to and lost by the attorney, so that the action is barred before new suit commenced, there can be no reliance upon the original attempt to sue; *Wolfenden v. Barry*, 65-653.

Sect. 2532; only when statute limitations is in question is delivery of notice to the sheriff for service, the commencement of suit; for all other purposes suit is commenced by actual service of notice; *Proska v. McCormick*, 56-319.

Sect. 2532; a notice of an action with the appearance day left blank, is not an "original notice" within the statute; the delivery of such a notice by a J. P., to a constable, with the understanding that the officer shall insert the appearance day, at or before the time of service, does not commence an action within the statute; *Phinney v. Donahue*, 67-195.

Sect. 2532, 2599; action is commenced when the notice is served upon defendant; not when it is placed in hand of officer to serve; *Parkyn v. Travis*, 50-438.

Sect. 2534; one need not be resident to plead cause of action barred by laws of state in which he has resided; *Lebrecht v. Wilcoxon*, 40-94.

Sect. 2535; statute limitations, on action for recovery of real property, suspended during infancy by section; *Mathews v. Stephens*, 39-281.

Sect. 2537, applies only when no judgment on the merits is rendered in the first action and the second is brought on the same cause of action; *M'Donald v. Jackson*, 55-40.

Sect. 2537; demand necessary and not made until the statute limitations have run against the claim; claim not saved under this section; *Dist. Towns. v. Dist. Towns.*, 62-32.

Sect. 2537; extending the statute of limitations during six months to a new action,

as in continuance of the first suit in which plaintiff fails without negligence of his, does not apply to a cause by him voluntarily dismissed; *Archer v. R'y Co.*, **65-612**.

Sect. 2537; petition not filed by time fixed in original notice by oversight of attorney; discontinuance by negligence in prosecution; new action commenced not a continuation of the first action; *Clark v. Stevens*, **55-363**.

Sect. 2543-4; one who acts for himself and others in depositing money with a stakeholder in a wager can recover only so much as he himself contributed; *Toney v. Snyder*, **50-74**. (x).

(x.) *Ruckman v. Pitcher*, 20 N. Y., 9.

Sect. 2543, 2561, assignment of cause of action on pending suit; action continued in the name of the original party, or the assignee may be substituted at the discretion of the court; *Snyder v. Phillips*, **66-482**; see Rev., 1860, §§ 2757, 2794, ante.

Sect. 2544; a chose in action transferred to a trustee, he may sue thereon in his own name; *Goodnow v. Litchfield*, **63-279**.

Sect. 2546; promissory note, not transferred in good faith for a valuable consideration and before due; any equities existing against the payee may be pleaded against the assignee; *Bone v. Tharp*, **63-227**.

Sect. 2546; defendant in action by the assignee of a negotiable note, transferred after due, may set up as a counter claim a note held by him against assignor, which was acquired by him before notice of transfer by assignor; *Downing v. Gibson*, **53-518**.

Sect. 2546; note indorsed after maturity; payments to original payee by maker, without notice of the indorsement, a defense on action by indorsee; *Haywood v. Seiber*, **61-575**. (y.)

(y.) *Brooks v. Twitchell*, 6 Met., 513.

Sect. 2548; joint owners of a note must be joined in suit thereon, though it payable to bearer and in possession of one; *M'Namee v. Carpenter*, **56-277**.

Sect. 2550, abolishes all distinction between joint and several liability, and authorizes an action against any one of the parties to a joint obligation; *Strong v. Lawrence*, **58-61**.

Sect. 2550, applies to judgment by confession; thus judgment by confession against maker is no bar to suit against surety; *City Sav. Bk. v. Oleson*, **47-493**.

Sect. 2550; on notes, joint and several, the holder may bring action against all or any one of the obligors or legal representative of one who has died; *Smith v. M'Fadden*, **56-486**; see *Sellon v. Braden*, **13-367**.

Sect. 2550-3; action against two parties prosecuted against one only; judgment on verdict against him alone; proper; *Poole v. Hintrager*, **60-183**.

Sect. 2550, 2631, on division of misjoined causes of action and filing of new petition, defendants being already in court, can not demand service of a new original notice, and may be required to plead within some short time fixed; if time be wanted it should be asked in the trial court; *Dorothy v. Hicks*, **63-242**.

Sect. 2551; this statute does not contemplate the bringing in of a party for the convenience of one who is already a party; *Vimont v. R'y Co.*, **64-522**.

Sect. 2551; motion to bring in to a suit, for a tort, the plaintiff's assignor, on the ground of invalidity of assignment properly overruled; assignor in answer to the motion disclaiming all interest and setting up the sale and assignment of the claim; *Vimont v. R'y Co.*, **64-516**.

Sect. 2552; administrator's bond may be sued upon by any person interested in the estate; *Stewart v. Phenice*, **65-478**.

Sect. 2552; attachment plaintiff or his assignee may maintain action of delivery bond; *Rowley v. Jewett*, **56-494**.

Sect. 2552; bond, to a railroad company, to secure the performance of a contract, and for the security of third persons performing labor; assignee of persons holding claims for labor may sue thereon; *Jordan v. Kavanaugh*, **63-157**.

- Sect. 2552; one for whose security an injunction bond must have been given has an action thereon, though he be not therein named; *Van Gorder v. Lundy*, 66-452.
- Sect. 2572-4, providing that in an action of replevin against the sheriff for property levied on, the party in whose favor the process issued may be substituted as defendant, and the sheriff discharged of liability, unconstitutional and void; *Sunberg v. Babcock*, 61-602; *Maish v. Littleton*, 62-106.
- Sect. 2572-4; in action against the sheriff to recover property taken by him under process, in which the sheriff has answered, a joint application of the sheriff and the person in whose favor process issued, may be made, at any time; *Birby v. Blair*, 56-419.
- Sect. 2580-1, do not apply to verbal contracts on oral stipulation to pay at place of sale; purchaser residing in another county, suit can not be at place of sale; *Hatch v. Johnson*, 44-536.
- Sect. 2581; note payable in one county but the maker and one who had verbally agreed to pay the note resident in another county; in action against all the parties he that is orally bound entitled to transfer of the cause to the county of his residence; *M'Daniels v. Wheeler*, 64-679.
- Sect. 2581, 2586; the statute authorizes an action to be brought against non residents of the county only in cases where the liability arises upon a writing signed by the defendant; *M'Daniels v. Wheeler*, 64-679.
- Sect. 2584; confers jurisdiction upon J. P. of an action brought on a policy of insurance, insuring property within his county, where the loss occurs, although the insurer's principal office, or place of business, is in some other county; *Hunt v. Ins. Co.*, 67-744.
- Sect. 2585, contract between agent and principal, residents of different counties for the transaction of business in county; action for violation of contract properly brought by agent in his county, where the agency was located, and motion to change venue to principal's residence properly overruled; *Ockerson v. Burnham*, 63-572.
- Sect. 2586; action for damages, being a mere personal action, should be brought in the county of defendant's residence; an injunction in aid of the suit (in this case to restrain collection of a judgment) may issue from the proper court of such county, non obstante § 3396, the action not being based on any defect or invalidity in the judgment; *Baker v. Ryan*, 67-710.
- Sect. 2587, does not apply to the case of action brought to recover specific personal property; but, only to actions purely personal; *Porter v. Dalhoff*, 59-461.
- Sect. 2587; where one is sued on a contract in a county not of his own residence, with others who are residents, he can not have a change of venue on the ground of a failure to obtain judgment against them, the right to judgment as to them not being determined; *M'Alister v. Safley*, 65-721.
- Sect. 2589; as to actions brought in wrong county, not applicable to actions before J. P. in wrong township; *Post v. Brownell*, 36-497; *Meunch v. Breitenbach*, 41-529.
- Sect. 1589; action brought in the wrong county; in the absence of a motion to transfer the cause to proper county, the suit may be prosecuted to judgment in the county where brought; *Goldsmith v. Willson*, 67-667; *Horak v. Horak*, 68-60.
- Sect. 2590; application for change of venue, "that they are not related to the plaintiff in this action nearer than the fourth degree, nor do they nor any of them stand in the relation of servant, agent or employe of said plaintiff; nor are they in any manner interested in the result or issue of this action"; sufficient; *Goodnow v. Litchfield*, 63-279.
- Sect. 2590, cl. 3, affidavit that "defendants and their attorneys" have such undue influence over the inhabitants etc., means that both defendants and their attorneys have such influence; the affidavit complies with the statutory requirement; *Birby v. Carskaddon*, 63-167.

- Sect. 2590; application for change of venue for prejudice of judge; party refusing to point out affiants, who support by affidavit, for cross examination and court satisfied application for delay, competent to deny; *Davis v. Rivers*, 49-438.
- Sect. 2590; motion for change of venue by corporation, for prejudice of the judge; the principal affidavit may be made by any officer or agent knowing the facts; *M'Govern v. Lumber Co.*, 61-248.
- Sect. 2590, subd. 4; stipulation for change of venue may be signed by parties or their attorneys; the word "and", in the section, is used in disjunctive sense; *Oltrogge v. Schulte*, 51-280.
- Sect. 2590-1; as to change of venue, applies to action in which the county where it is pending is a party; *Ferguson v. Davis Co.*, 51-222.
- Sect. 2590, amended by Stat., 1878, ch. 118; change of venue from the county is not allowed in cases appealed from justices to the circuit court; *Ardery v. Ry. Co.*, 65-725.
- Sect. 2591; providing against a second change of venue for a cause existing when a first change is obtained does not apply to a case where the change was by agreement of parties; *Bixby v. Carskaddon*, 33-167.
- Sect. 2591; application for change of venue, for prejudice of people of county, can not be made in vacation and before issues made up; *Gibson v. Abbott*, 50-155.
- Sect. 2591; no second change of venue on motion of same party save on showing that the cause for the change did not exist when the first change was granted; not enough to show party did not then have knowledge of it; strict compliance with section required; *Michaels v. Crabtree*, 59-618.
- Sect. 2599; see § 180, ante.
- Sect. 2600; language imperative; petition not filed within time stated in notice, proceeding discontinued; *Cibula v. Manuf. Co.*, 48-529.
- Sect. 2600; petition filed on a day later than named in original notice; discontinuance; *Hildreth v. Harney*, 62-421.
- Sect. 2600; petition filed on a day later than named in original notice; judgment not void, but irregular; no collateral attack; *Hildreth v. Harney*, 62-41; see *Brown v. Mallory*, 26-471.
- Sect. 2600; in the computation of time, for service of notice, Sunday is excluded only when it is the last day, and some act is thereon to be done; *Conklin v. Marshalltown*, 66-123.
- Sect. 2613, requires the principal to respond to service of notice upon the agent, only in matters connected with the agency; *Manuf. Co. v. Stewart*, 61-210.
- Sect. 2613, does not warrant the service of original notice on one agent, in an action growing out of the business of another and former agent, conducting a different office in the same town; no jurisdiction acquired by such service; *Ins. Co. v. Granger*, 62-274.
- Sect. 2618; in action aided by attachment against a non resident, publication completed before petition filed and writ issued confers no jurisdiction; *Billings v. Klothe*, 49-36; overruled, *Foster v. Henderson*, 54-220.
- Sect. 2618; affidavit as a basis of service of notice by publication need not state the defendant to be a non resident; it suffices to follow the statute; *Taylor v. Ormsby*, 66-111.
- Sect. 2618; an affidavit that defendant "has absconded, so that ordinary process can not be served upon him in this state," is not sufficient to justify service by publication; *Fuller v. Riggs*, 66-329.
- Sect. 2619; no newspaper printed and published in county where suit brought, attorney select newspaper from either county bordering on the one where suit brought; *Cooke v. Tallman*, 40-135.
- Sect. 2626; applies to cases in which there are objections to the substance or service of the notice, not to a proceeding after service and contemplated by the notice—as the failure to file petition in time stated; *Cibula v. Manuf. Co.*, 48-529.

- Sect. 2628; *lis pendens*; in action by wife for unlawful sale of liquors to her husband, in which the owner of the building occupied by the seller is made a party and a lien on the building is asked, the petition affects real estate and a purchaser pendente lite takes subject to final judgment; *O'Brien v. Putney*, 55-294.
- Sect. 2628; the purchaser, of land at execution sale after action commenced to set aside the title of defendant in execution in the county in which the land lies is not a bona fide purchaser, as against the plaintiff in the action; *Rider v. Kelso*, 53-370.
- Sect. 2628; attachment against land of one and injunction against another, restraining disposal of mortgage on such property, is not *lis pendens*, to charge purchaser of note and mortgage before injunction served; *Newcomb v. Nelson*, 54-325.
- Sect. 2630; a money demand arising *ex contractu* can not be joined with prayer to set aside conveyance for fraud; *Stevens v. Chance*, 47-603.
- Sect. 2634; see § 2510, ante.
- Sect. 2635; this section has reference to original proceedings, not to appeals; *Harty v. R. R. Co.*, 54-330.
- Sect. 2640; the word "morning" in the fourth line of this section, is a mis-print; it should be "noon;" *Brandt v. Wilson*, 58-486.
- Sect. 2640-1; apply only to motions assailing pleadings, not to dissolution of injunction; *Miller v. Flekner*, 42-462.
- Sect. 2648; misjoinder of parties not assailable by demurrer; *King v. King*, 40-120.
- Sect. 2648; general demurrer in equity; demurrer not in precise language of Code held special, if intention of pleader in assailing defect apparent; *Hanna v. Hawes*, 45-442.
- Sect. 2655; a counter claim is an answer; *Town v. Bringolf*, 47-134.
- Sect. 2655; to raise an issue, on denial of fact upon knowledge and information, the party must deny having knowledge or information sufficient to form a belief as to the truth of the fact pleaded; *Clafin v. Reese*, 54-545.
- Sect. 2655, par. 2; an answer denying that one has "any knowledge or information sufficient to form a belief as to the truth" of the allegations contained in a specified paragraph of the petition, in effect, denies the matter pleaded in such paragraph and puts the same in issue; *Carr v. Bosworth*, 68-671.
- Sect. 2659; the counter claim contemplated must be based upon a new cause of action which will not be adjudicated by the decision of the cause, unless it be presented by the answer and new issues tendered therein, to call for a reply, as provided by Code, § 2665; *Walker v. Land Co.*, 66-753.
- Sect. 2663; notice of the filing of a cross bill, setting up a cause of action against a co-defendant, is essential to jurisdiction in a court to render judgment against the co-defendant thereon; *Thode v. Spofford*, 65-208.
- Sect. 2665; action to quiet a tax title; allegation of defendant that no notice to redeem was served on him does not call for a reply to put the fact in issue; *Walker v. Town Lot Co.*, 65-564.
- Sect. 2665; see § 2659, supra.
- Sect. 2666; that a reply must not be inconsistent with petition, does not apply to an amendment of the petition—after petition for intervention has been filed—which is, in effect, an answer to the latter petition and sets out a counter claim; *Jack v. R. R. Co.*, 49-629.
- Sect. 2667, subd. 2; to constitute a valid, operative attachment levy, under this provision, the officer should do that which would amount to a change of possession, or something that would be equivalent to a claim of dominion, coupled with the power to exercise it; *Bickler v. Kendall*, 66-706; *Crawford v. Newell*, 23-453.
- Sect. 2673; verification of pleading by party's attorney, need not show why he knows the facts stated better than his client; *Yoe v. Nichols*, 15-332; see *Rausch v. Moore*, 46-611; *Searle v. Richardson*, 67-172.
- Sect. 2673; defendant's attorney may verify statements in an answer, the truth of

- which, he shows, he has heard the plaintiff admit; but, his knowledge that other facts, pleaded in the answer, were adjudicated between the parties, on a former trial, does not qualify him to verify the statement of such facts; *Searle v. Richardson*, 67-172.
- Sect. 2681; in action of libel, the petition may set out the words and state the defamatory sense in which they were used without stating extrinsic facts to show that sense; *Clarke v. Jones*, 49-478.
- Sect. 2682; may provide a new rule by which the sufficiency of a plea in mitigation, in an action of slander, is to be tested; but, if so, this is true only as to matters of mere form; no change is made in matters of substance; i. e., the same matters only can be pleaded in mitigation which are recognized to be such by law, independent of the statute; *Marker v. Dunn*, 68-721.
- Sect. 2683; giving a right, to one interested in the subject matter of an action, to unite with defendant in resisting plaintiff's claim does not give such person a right to be substituted for defendant; *Britton v. R. R. Co.*, 59-541.
- Sect. 2683 (Rev., 1860, § 2930); board of supervisors conspiring to give judgment to plaintiff in action against county; tax payer may intervene and defend; *Greeley v. Lyon Co.*, 40-74.
- Sect. 2689; on appeal from J. P. pleadings amendable in circuit court; *Clow v. Murphy*, 52-606.
- Sect. 2689; party incapacitated to sue; substitution of party, by amendment, after demurrer sustained, proper; *Wells v. Stomback*, 59-377.
- Sect. 2689, a demurrer is a pleading and amendable; *Morrison v. Miller*, 46-86.
- Sect. 2690; omission of plaintiffs to prove that they were the heirs and only heirs of him from whom they claimed to inherit land in controversy; no ground to reverse decree in their favor; *Kibby v. Harsh*, 61-197.
- Sect. 2688; answers to interrogatories attached to pleading must be verified by party answering; mere jurat of notary not sufficient; *Averill v. Boyles*, 52-674.
- Sect. 2704, 2718; evidence which tends to negative allegations which plaintiff is bound to prove is admissible without pleading the facts specially; *Johnson v. Pennell*, 67-673.
- Sect. 2710; under this section an admission made in one defense is not to be construed as affecting a different and inconsistent defense; *Heinrichs v. Terrell*, 65-29.
- Sect. 2712 (Rev., 1860, § 2917), evidence tending to controvert allegations of petition not answered or denied inadmissible; *Singer Manuf. Co. v. Billings*, 39-348.
- Sect. 2712; allegations of fact in counter claim undenied; taken true; *Nat. B'k v. Fletcher*, 40-431.
- Sect. 2713; not applicable to action to recover money fraudulently secreted and kept and for expense, trouble and inconvenience caused thereby; *Lambert v. Mills Co.*, 58-670.
- Sect. 2716; petition in action by partnership or corporation should aver the capacity in which the suit is brought; otherwise demurrable; *Sweet v. Ervin*, 54-101.
- Sect. 2717; defendant sued as a corporation; denial that it ever was such or was ever organized or attempted to organize as such; denial sufficiently specific; *Folsom v. Freight line*, 54-497.
- Sect. 2730, as to denial of signature to writing, does not apply to suit of administrator of one deceased; in such case denial of execution of note includes denial of genuineness of signature; *Ashworth v. Grubbs*; 47-355.
- Sect. 2730; one may deny genuineness of signature without oath; but, this casts burden of proof on him; *Brayley v. Hedges*, 52-624.
- Sect. 2730; where the signature attached to a note sued on is denied, under oath, the burden is on plaintiff to establish its genuineness; ex. gr., where a note was signed by the clerk of a firm and indorsed by one member of the firm, authority in the single partner is not shown; *Miller v. House*, 67-738.
- Sect. 2731; action on a lease, judgment and landlord's lien asked for one instalment of

- rent due and a second to become due; the second instalment having become due plaintiff may file a supplemental petition, making the fact known and ask judgment therefor; *Sigler v. Gordon*, **68-442**; see *SeEVERS v. Hamilton*, **11-66**; *Davenport v. Mitchell*, **15-194**.
- Sect. 2732, ruling of demurrer to plea to the jurisdiction is not a "trial" within the meaning of this section; such demurrer sustained, defendant has a right to answer in bar; *Winet v. Berryhill*, **55-415**.
- Sect. 2740, subd. 3; actions for relief on ground of fraud, of which law and equity have concurrent jurisdiction, are limited to five years from the commission of the fraud; *M'Ginnis v. Hunt*, **47-669**.
- Sect. 2742; the appearance term contemplated is that term when it first becomes apparent there is, for trial and determination, any issue of fact; *Vinsant v. Vinsant*, **47-596**.
- Sect. 2742; statute depriving parties to chancery actions of right of review by trial de novo can not be enforced; exceptions found in this section void; *Sherwood v. Sherwood*, **44-196**.
- Sect. 2742, order for trial on written testimony must be entered in writing; *Berryhill v. Smith*, **51-128**.
- Sect. 2742, case set for trial on written evidence; oral testimony not admissible; *Harlan v. Porter*, **50-447**.
- Sect. 2742; divorce triable de novo on review regardless of § 2742; *Sherwood v. Sherwood*, **44-198**.
- Sect. 2742; to authorize trial de novo on appeal judge of trial court must show by certificate of evidence the date of its execution or appellant must aver that it was executed within the prescribed time; *Mitchell v. Laub*, **59-87**.
- Sect. 2742; certificate of evidence "being all the evidence submitted in said cause;" sufficiently complies with the statute; *Miller v. Wolf*, **62-235**.
- Sect. 2742; repeal by statute, 1878, ch. 144, not change rule that proceedings in case upon appeal must conform to statute when the action prosecuted at nisi prius; *Simondson v. Simondson*, **50-111**; *Tresbon v. Zuraff*, **50-181**; *Joliet Iron etc. Co. v. R. R. Co.*, **50-458**; *Hunt v. Downs*, **50-697**.
- Sect. 2740, action to recover but one sum, one count based upon minority existing when contract made and subsequent disaffirmance and a second on fraudulent representations inducing the contract; denial of separate trials on counts proper; *Childs v. Dobbins*, **61-113**.
- Sect. 2747, cl. 7; see §§ 107, 2747, cl. 7, ante.
- Sect. 2749; motion to continue criminal case on account of popular excitement and prejudice; counter affidavits may be filed; *State v. Wells*, **61-630**.
- Sect. 2749; continuance of criminal case asked under this section, on the ground of popular excitement and prejudice; state may introduce counter affidavits; *State v. Wells*, **61-630**.
- Sect. 2749; party negligent; refusal of continuance, affirmed where to grant would be proper; *Walker v. Scofield*; **39-667**.
- Sect. 2751; admission to bar continuance that a witness would testify, if present, as stated not preclude objection to statement as incompetent; *State v. Geddis*, **42-268**.
- Sect. 2752; cause for continuance absence of a witness, known on the first day of term; motion filed on the second day; properly overruled; *State v. Bengé*, **61-659**.
- Sect. 2772; a juror who states that the opinion he has formed is based upon hearsay and not upon statements made by any one claiming to have personal knowledge and that he still thinks he can render a true verdict is competent; *State v. Ormiston*, **66-153**.
- Sect. 2772, subd. 9; action v. municipal corporation; not error to sustain challenge, for cause, v. citizen and tax payer of defendant; *Cramer v. Burlington*, **42-318**.

- Sect. 2784; instruction written in pencil satisfies the statute; *Harvey v. Tama Co.*, **53-232**.
- Sect. 2784; the statute requiring instructions to be written is complied with by printed instructions; *State v. Fooks*, **65-199**; *State v. Fooks*, **65-453**.
- Sect. 2785; it is not in violation of this section, providing how changes in instructions shall be noted, to separate papers on which one is written, to remove an objectionable part; *Ham v. R'y Co.*, **61-720**.
- Sect. 2786; instructions written on several sheets of paper, fastened together, with marginal indorsement "Instructions one to seven all refused," satisfies the statute; *Harvey v. Tama Co.*, **53-232**.
- Sect. 2789; the supreme court can not review rulings on instructions which are not excepted to at the trial, or within three days after verdict rendered; *Maxon v. R'y Co.*, **67-229**.
- Sect. 2790; leaves it to the discretion of the trial court whether or not the jury shall view the premises, the subject of controversy; this provision is directory and the supreme court can not interfere with this discretion; *Clayton v. R'y Co.*, **67-239**.
- Sect. 2793; authorizing a verdict from ten or eleven jurors, in the event of the sickness of one or two jurors after the empanelling of the jury, is unconstitutional; *Eshelman v. R'y Co.*, **67-297**; see *Cowles v. Buckman*, **6-161**; *Kelsh v. Dyersville*, **68-138**.
- Sect. 2797; excludes depositions, only, from the jury room; in an action to recover damages for a personal injury (in this case, by reason of a defective sidewalk) it is not improper to allow the jury to take, on their retirement, a photograph of the locus in quo; *Barker v. Perry*, **67-147**.
- Sect. 2797; the evident purpose, in excluding depositions from the jury room during deliberation, is that the jurors shall not give to them more consideration than to the oral testimony; *Fleming v. Shenandoah*, **67-507**.
- Sect. 2799; refusal to re-open cause on trial to admit testimony of a witness, who living at a distance started in ample time but was delayed by an accident, without fault or negligence of the party or himself, error; *Smith v. Ins. Co.*, **58-489**.
- Sect. 2806-9, authorizing special findings, relate to civil cases alone; *State v. Fooks*, **65-199**; *State v. Fooks*, **65-453**.
- Sect. 2808; providing for the submission of particular questions of fact to the jury, has reference to civil actions only; *State v. Ridley*, **48-374**.
- Sect. 2808; the statute does not require special findings of immaterial facts; *Lawson v. R. R. Co.*, **57-674**.
- Sect. 2808; jury may, at discretion, render general or special verdict; but, it is error for the court, against defendant's objections, to direct jury to render special verdict only; *Schultz v. Cremer*, **59-183**.
- Sect. 2816; great perplexity of accounts between parties, so that all examination by a jury is impracticable; cause properly of equitable cognizance and the court may, of its own motion, refer the same for report of testimony, facts and conclusions; *Burt v. Harrah*, **65-645**.
- Sect. 2821; exception taken to judgment on referee's report does not bring up for review any error alleged in the report; exceptions must be taken to the report in trial court; *Bauder v. Hinckley*, **60-186**.
- Sect. 2823, has no application to exceptions to report of referee, but only to bill of exceptions signed during trial to present questions not apparent of record; *Michael v. Longman*, **42-485**.
- Sect. 2823; exceptions to referee's report may be made, in court, after report filed; *Edwards v. Cottrell*, **43-202**.
- Sect. 2826; referee's report reciting that he duly sworn before proceeding; failure to file affidavit not fatal objection; *Shindler v. Luke*, **43-90**.
- Sect. 2831 (Rev. 1860, § 3106); bill of exceptions may, by consent of parties, be signed after term adjourned; *Harrison v. Charleton*, **42-576**.

Sect. 2837; showing that the prevailing party introduced false testimony on a material point which, could not then but, now can be contradicted; ground for new trial; *Nat. Bk. v. R'y Co.*, **61-701**.

Sect. 2837-8; on motion for new trial party entitled to have hearing on merits; bill of exceptions can not be made a condition precedent; *Emery v. Emery*, **54-107**.

Sect. 2838; not required that motion for new trial be determined at term at which it filed; if it be not determined it is continued to next term (§ 172) without record entry; *Van de Haar v. Van Domseller*, **56-673**.

Sect. 2838; that the court is not in session for a few days during term is not an extension of time to file motion for new trial; *Ewaldt v. Farlow*; **62-215**.

Sect. 2838; does not require a motion for new trial, on the ground of newly discovered evidence, to be filed within three days; *Van Horn v. Redmon*, **67-691**.

Sect. 2839; as to granting new trial for inadequacy of damages; the court is not required to grant a new trial in every case where the damages are less than the actual pecuniary injury; ex. gr., where, by a verdict for \$1, the jury evidently intended to award no damages and the preponderance of evidence was against the right to recover; *Hubbard v. Mason City*, **64-247**.

Sect. 2839; direction to clerk to "insert all the evidence, rulings, objections and exceptions" in bill of exceptions, fatally defective as to identification of evidence etc.; *Hill v. Holloway*, **52-678**.

Sect. 2841, trial court may require, as condition of new trial, the filing of a bond, in a sum equal to the amount of verdict, conditioned to pay judgment and costs; *Loring v. Holt*, **39-574**.

Sect. 2844, this section has no reference to the matter of reinstating a cause dismissed for want of prosecution; *Byington v. Quincy*, **61-482**.

Sect. 2844, providing for the right of dismissal before final submission without prejudice to future action, does not enlarge the statute of limitations as to the action dismissed; *Archer v. R'y Co.*, **65-612**.

Sect. 2844; case not finally submitted until direction given to proceed to consider of verdict; *Harris v. Beam*, **46-119**.

Sect. 2844, a case is not finally submitted, when, after submission, an amendment-raising a new issue is allowed; *Jones v. Currier*, **65-534**.

Sect. 2844-5; it is not competent for the court, sponte sua, to dismiss a cause in equity without prejudice after it has been finally submitted on the evidence; *Forsythe v. M' Murty*, **59-162**.

Sect. 2867; does not give authority to cancel a judgment on motion based on grounds existing prior to its rendition; *Brett v. Myers*, **65-275**.

Sect. 2866; providing for complete record in actions involving title to real estate; does not apply to an action to charge land in the hand of grantee with debts of grantor; *Smith v. Cumins*, **52-144**.

Sect. 2866, the record provided for should contain only the original notice and return, pleadings and judgment; not evidence; *Smith v. Cumins*, **52-145**.

Sect. 2870; the provision that default shall not be had until the court determines, by an inspection of the record, that notice has been given is not jurisdictional—merely directory; where service has been made and default entered, return not made not invalidate judgment; *Lawrence v. Howell*, **52-63**.

Sect. 2871; as to setting aside default, applies only where party is actually in default, not where a paper which would save the default is on file; *Beasley v. Cooper*, **42-544**.

Sect. 2871; as to setting default aside, contemplates that the applicant shall set forth, in his affidavit, a statement of the facts constituting his defense; *M'Grew v. Downs*, **67-688**.

Sect. 2877; authorizing re-trial, within two years, of all cases where judgment by default is rendered on service by publication only, does not apply to the case of a judgment void for want of jurisdiction to render it; *Smith v. Griffin*, **59-411**.

Sect. 2877; personal service on defendant outside of state; he is not entitled to new

- trial under this section; it applies only to case of service by publication; *M'Bride v. Harn*, 52-30.
- Sect. 2877; judgment in rem before J. P., on service by publication, defendant not appearing, may be set aside for re-trial, in proper case, within two years; *Organ Co. v. Plumb*, 57-35.
- Sect. 2877; the assignee of a defendant served by publication has no right to appear and demand a re-trial on his own account, under the statute; only the defendant or his legal representative (ex. gr., agent, attorney or possibly administrator) may; *Parson v. Johnson*, 66-457.
- Sect. 2877; as to new trial by one served by publication only, does not provide that notice of the motion therefor shall be served on plaintiff; *Pollock v. Simpson*, 67-520.
- Sect. 2897; empowering court clerks to enter judgment by confession does not confer judicial power; *Kendig v. Marble*, 58-231; see *Grattan v. Matteson*, 54-231.
- Sect. 2899; offer to confess judgment, in pending suit, carries costs to date as an incident; *Manning v. Irish*, 47-652.
- Sect. 2899; to entitle defendant to costs by offer to confess judgment, such offer must be confined to matters in suit; *Phillips v. Shearer*, 56-262.
- Sect. 2899; an offer to confess judgment, under this section, may be made orally and there is no provision requiring that it be made of record; wherefor, a question arising as to the amount of an offer, parol evidence as to it was properly received; *Barlow v. Buckingham*, 68-173.
- Sect. 2900; has no application to case of assessment of damages by location of street; *Cherokee v. Land Co.*, 52-282.
- Sect. 2900; fact of offer and amount offered mentioned to jury and commented on by counsel; objection and instruction to disregard the statement; evident no instruction could remove from juror's minds the knowledge acquired. Defendant had a right to jurors destitute of the knowledge; *M'Cormick v. C., R. I. & P. R. R. Co.*, 47-346.
- Sect. 2900; offer to confess judgment not accepted and reference made to the fact by plaintiff's counsel; defendant should object and ask discharge of jury; *Riech v. Bolch*, 68-528.
- Sect. 2900; plaintiff failing to notify of acceptance of offer made by defendant within time prescribed; presumed offer withdrawn and plaintiff not avail of it after trial; the only consequence is, on failure to recover so much as offered, plaintiff pays all costs subsequent to offer; *Holmes v. Hamburg*, 47-350.
- Sect. 2903; mortgagee in possession of a stock of goods under mortgage authorizing the possession and sale of the goods, garnished by creditors of mortgagor, seeking to foreclose in equity may have receiver appointed to hold and sell; *Maish v. Bird*, 59-308.
- Sect. 2903; adverse party not within the jurisdiction and service of notice not readily to be had, receiver may be appointed without notice; *Maish v. Bird*, 59-310.
- Sect. 2906-10; tit. 17, ch. 13; to compel the payment of money in accordance with judgment of court; action to set aside judgment can not be united with the summary proceeding to hold defendant liable for the non payment of money received by him on the judgment; *Elliott v. Jones*, 47-128.
- Sect. 2923; judge in vacation may direct publication of notice of execution sale; *Herriman v. Moore*, 49-172.
- Sect. 2924; providing that orders made by a judge in vacation shall be in force only until second day of ensuing term, applies only to orders directing officers of court as to discharge of their duties; *Shaw v. M'Henry*, 52-185, following *Curtis v. Crane*, 38-459.
- Sect. 2927; motion for security for costs, when proper, must be filed by the time defendant, by statute or order, is required to plead or may be properly overruled; *Sprague v. Haight*, 54-447.

- Sect. 2927, 2929; plaintiff becoming non resident after suit instituted; motion for security for costs after answer filed too late; *Gilbert v. Hoffman*, 66-208.
- Sect. 2927-30; as to security for costs, has relation to the ordinary forms of action; not to a proceeding, which is merely incidental to the main proceeding, for the settlement of an insolvent's estate; *Meyer v. Evans*, 66-181.
- Sect. 2931; an attorney who offers himself as surety on a bond, in a proceeding in court, and is accepted by the proper officer can not plead the fact of attorneyship in release of his obligation; *Wright v. Schmidt*, 47-235.
- Sect. 2933; apportionment of costs not apply where the cause of action is a single indivisible claim; *Upson v. Fuller*, 43-409; *Hammond v. R. R. Co.* 49-453.
- Sect. 2933; costs of restoring record of judgment destroyed, if resisted, should be upon losing party; *Kanke v. Herrum*, 48-277.
- Sect. 2933; action on four separate items of account, aggregate \$41.50; judgment, before J. P., \$12 appealed from; on appeal recovery \$1; proper case for apportionment of costs; *Howder v. Overholser*, 48-366.
- Sect. 2935, 3842: parties entitled to costs may issue fee bill against judgment defendant as being primarily liable; failing to collect they may, on motion, require the successful party to pay costs he made; *McConkey v. Chapman*, 58-282.
- Sect. 2944; this provision affords a remedy only against errors occurring in the taxation of the items of costs; *Fairbairn v. Dana*, 68-233.
- Sect. 2951; authorizing attachment on ground that defendant is about to remove his property out of state, contemplates a permanent removal—not a temporary use of property out of state; *Warder v. Thrilkeld*, 52-135.
- Sect. 2953, providing that attachment is not authorized where amount in controversy is less than \$5, applies only to actions ex contractu, not to actions ex delicto; *Weller v. Hawes*, 49-46.
- Sect. 2961, as printed, contains a misprint, in the provision where action is brought on the bond, that the amount of the fee "shall be filed by the court;" the enrolled bill provides that the fee shall be "fixed" by the court; *Selz v. Belden*, 41-457; *Weller v. Hawes*, 49-47.
- Sect. 2961 (Rev. 1860, § 3177), within legislative authority to provide the court may fix amount of attorney's fee for defending against attachment wrongfully sued out; *Weller v. Hawes*, 49-46.
- Sect. 2961; attachment wrongfully sued out; defendant not entitled to attorney's fee for defending the whole suit; only for services in the auxiliary proceeding; *Porter v. Knight*, 63-372.
- Sect. 2961; general verdict for plaintiff, in action on attachment bond, authorizes allowance of attorney fee by court; *Nockles v. Eggspieler*, 53-731.
- Sect. 2964; regarded as defining the duty of the officer as to the order in which property shall be seized on attachment rather than as creating a rule as to the interest of the debtor which may be levied on; *Wells v. Frank*, 68-240.
- Sect. 2970; conferring power to appoint receiver of property attached, not authorize such appointment without showing of facts rendering the exercise of the power necessary or proper; *Silverman v. Kuhn*, 53-453.
- Sect. 2975, debt not in existence at time of garnishment is not a debt "to become due;" *Thomas v. Gibbons*, 61-51.
- Sect. 2975, amended by Statute, 1880, ch. 58; suit in attachment and defendant brought in to court by proper notice, supposed debtor garnished; judgment can not be rendered against the garnishee unless notice thereof is served upon the principal defendant; *Wise v. Rothschild*, 67-85.
- Sect. 2976; garnishment of judgment debtor affects only the liability of garnishee, not the rights of claimants; *Howe v. Jones*, 57-139.
- Sect. 2976; sheriff may be garnished for money of a defendant in his hands, although money received in discharge of official duty; *Hoffman v. Wetherell*, 42-90; see *Patterson v. Pratt*, 19-358.

Sect. 2979; see § 3051, 2979, post.

Sect. 2979-80; requiring a garnishee to appear in court and answer interrogatories, can not apply to a corporation aggregate; such corporation may answer in writing by agent; *Bailey v. R'y Co.*, 62-358.

Sect. 2982, does not give an absolute right to examine garnishee, without regard to the pertinency of questions; the court may require written interrogatories to be filed upon the pertinency of which it may pass; *Elwood v. Crowley*, 64-70.

Sect. 2985; notice to garnishee to show cause against judgment means a reasonable notice; it may be during term at which he should show cause; *Langford v. Water P. Co.*, 53-416.

Sect. 2994-5; judgment rendered against attachment defendant may be entered, also, against sureties on a delivery bond; *State v. M'Glothlin*, 61-314.

Sect. 2995; a separate action is maintainable on a delivery bond against sureties, for the amount of judgment unpaid; *State v. M'Glothlin*, 61-314.

Sect. 2996-7, 3016; a third person claiming to own personalty, attached in suit to which he is no party, who has recovered possession, may intervene in the attachment suit and have his rights adjudicated; *Tuttle v. Wheaton*, 57-305.

Sect. 3005; not require debtor to give notice of his claim of exemption from execution to officer; *M'Coy v. Cornell*, 40-459.

Sect. 3005-6, to enable the state to sue out attachment prior demand is essential; *State v. Morris*, 50-215.

Sect. 3016; the remedy of third person claiming interest in property attached is under this section; *Tidrick v. Sulgrove*, 38-340.

Sect. 3016; see § 2996-7, 3016, ante.

Sect. 3018, an attachment upon real estate, where the question of ownership is in dispute, may be moved discharged when the facts are conceded; *Rausch v. Moore*, 48-613.

Sect. 3018; property attached discharged on motion, under section, only when improper levy apparent on face of record; *Tidrick v. Sulgrove*, 38-340.

Sect. 3018; motion to discharge attachment levied, on allegation that defendant is about to remove his property out of state, showing the property exempt, should be sustained; *Hastings v. Phoenix*, 59-395.

Sect. 3025; this section is mandatory; an order to return execution will not make valid a sale under a second execution the first not being returned; *Merritt v. Grover*, 61-100.

Sect. 3025; the mere issuing of a second execution before the first regularly returned is not an abandonment of a levy made under the first; *West v. St. John*, 63-292.

Sect. 3021; amendment of petition for attachment allowable; *Lowenstein v. Monroe*, 52-232.

Sect. 3021; writ of attachment amendable after levy; *Atkins v. Womeldorf*, 53-158.

Sect. 3021; writ of attachment levied, in action not founded on contract, without allowance of the amount in value of property that might be attached being first made, the defect may be cured by an allowance made by the court after motion to quash filed; *Magoon v. Gillett*, 54-55; see *Gates v. Reynolds*, 13-1.

Sect. 3021; writ of attachment issued under seal of one court, the action being in another; competent to amend by attaching proper seal; motion to quash not lie; *Murdough v. M'Pherrin*, 49-480.

Sect. 3022; an entry made by the sheriff in the "incumbrance book," showing the attachment of certain lands, is notice to subsequent purchasers though the entry is not indexed; *Blodgett v. Huiscamp*, 64-550.

Sect. 3037; provides for return of execution on or before the 70th day from its delivery to the officer; but, where a levy has been made on property before the expiration of that time, a sale after the expiration of the 70 days is valid; *Cox v. Currier*, 62-554.

Sect. 3037; action against sheriff, for failure to return execution within 70 days, not maintainable without allegation and proof of injury, by the neglect, to execution plaintiff; *Musser v. Maynard*, 55-198.

Sect. 3038; contains no provision for a return, upon execution, showing the acts of any one but the officer; *Aultman v. M'Grady*, 58-119.

Sect. 3039; has no reference to the case of a separate action on a bond against sureties; *State v. M'Glothlin*, 61-315.

Sect. 3048; a mechanic's lien can not be established against any public property exempt from execution—by this section; *Whiting v. Story Co.*, 64-81. (z.)

(z.) *Williams v. Controllers*, 18 Pa., 275; *Ripley v. Co. Comm'rs*, 3 Neb., 397; *M'Pheeters v. Bridge Co.*, 23 Mo., 466; *Abercrombie v. Ely*, 60 Mo., 493; *Thomas v. B'd Educat.*, 71 Ill., 263; *B'd Educ. v. Needenberger*, 78 Ill., 58.

Sect. 3049 (Rev., 1860, § 3275); levy of tax of eight mills, by city, to pay judgments, after a levy of 10 mills for general and road purposes, legal; *Rice v. Walker*, 44-461.

Sect. 3051, 2979; judgment defendant in action in district court can not be attached as garnishee and subjected to judgment in garnishment proceeding, in circuit court; *M'Guire v. Pitts*, 42-538.

Sect. 3053; creditor of partner selling partnership assets under execution without proceeding to ascertain partnership interest, sale invalid as to firm creditor; *Aultman v. Fuller*, 53-63.

Sect. 3053-4; to reach interest of a party in partnership under execution, creditor is burdened to prove partnership; such proof wanting, error to refer to determine value of his interest; *Dupuy v. Sheak*, 57-365.

Sect. 3055; the object of the notice, herein required, is to enable the officer to demand indemnity against any claim asserted by third parties to the property; *Sanxey v. Glass Co.*, 68-546.

Sect. 3055; applies to persons other than the defendant in execution; it does not require such defendant to notify the sheriff that property levied on belongs to him before he can maintain an action to recover the property as being exempt from execution; *Parsons v. Thomas*, 62-320.

Sect. 3055; an officer making a levy is not required on the mere disclaimer by the debtor of any interest in the property to postpone the levy and inquire into the truth of the statement; *West v. St. John*, 63-290.

Sect. 3055; property levied on by and in possession of deputy sheriff; notice of claim of ownership by a third person may be served on the sheriff; *Headington v. Langland*, 65-279.

Sect. 3055; reading to an officer, about to levy on personal property, a bill of sale thereof, is not giving the officer the written notice required to relieve him from necessity of making levy; *Gray v. Parker*, 49-625.

Sect. 3055; notice of ownership of property seized under execution, in person not execution debtor, sufficient if it evinces the purpose and intention to claim right of possession and a present right of foreclosure provided for in mortgage; *Wells v. Chapman*, 59-662.

Sect. 3055; that property is attached at time that the officer levies execution upon it not relieve one claiming ownership from service of notice on officer; *Allen v. Wheeler*, 54-629.

Sect. 3055; a bill of sale, to the claimant of property, delivered by him to an officer about to levy thereon under an execution against another, is not such notice as this section requires; *Gray v. Parker*, 53-507.

Sect. 3055; officer can not recover for time and expenses in successfully defending in replevin; *Rickabaugh v. Bada*, 50-57.

Sect. 3055-6; levy under several executions; claimant of the property serving one notice of ownership made applicable to each case and one bond of indemnity taken from all execution creditor's; sufficient; separate notice and bond in each case not necessary; *Baxter v. Ray*, 62-337.

Sect. 3055-8; these sections relate solely to the protection of the officer proceeding upon execution; levy of an attachment is not within the statute and in such case an indemnifying bond is no protection to the officer, *Hall v. Ballou*, 58-586.

- Sect. 3055, 3225, cl. 4, 3228; owner of property held by officer under replevin writ against another (he not being party to that suit) may replevy from officer; intervention in first suit is not his exclusive remedy; *Davis v. Gambert*, 57-240.
- Sect. 3038; that the claimant or purchaser of property for the seizure or sale of which an indemnifying bond has been taken and returned by the officer shall be barred of action against the officer and confined to action on the bond is invalid; *Foule v. Mann*, 53-43; *Craig v. Fowler*, 59-201.
- Sect. 3062; stay of execution, otherwise properly taken, not invalid for failure of clerk to justify sureties; *De Boise v. Bloom*, 38-514.
- Sect. 3067; lien created by accepting and recording stay bond; not lost by not issuing execution, against the property of all judgment debtors and sureties, so soon as the stay expires; *Parish v. Elwell*, 46-164.
- Sect. 3062, 250; clerk of court liable for any damage accruing, to judgment creditors, by reason of negligence in approving insufficient bond; *Hubbard v. Switzer*, 47-682.
- Sect. 3068; where the original surety does not exercise his statutory right to object to a stay of execution being taken, it is presumed the stay is taken with his consent and for his benefit and, as between him and surety on the stay bond, he will be primarily liable on the judgment; *Chase v. Welty*, 57-233.
- Sect. 3072; a widower with whom lives his son and son's wife, employing a household servant, and who manages the household is the head of a family; *Tyson v. Reynolds*, 52-431.
- Sect. 3072, amended by Stat., 1882, chap. 49; execution defendant does not waive his right to hold property exempt from execution by failing to assert his right when he learns of its seizure, unless the officer require him to designate the property claimed to be exempt; *Ellsworth v. Savre*, 67-450.
- Sect. 3072; property belonging to wife, before marriage, used for family support, not exempt from execution for her debt; *Van Doran v. Marden*, 48-187.
- Sect. 3072; one who is in the livery stable business may, as a laborer, use a team of horses and vehicle and these may be exempt from execution if, thereby, he habitually earns his living; *Root v. Gay*, 64-400.
- Sect. 3072; stock in trade of retail grocer taken in to possession by mortgagee, mortgagor remaining in employment delivering things sold personally; wagon used to deliver exempt from execution, as property by which he earned his living; *Baker v. Hayzlett*, 53-20.
- Sect. 3072-3; food prepared by the keeper of a restaurant, for his boarders, is not exempt from execution; *Coffey v. Wilson*, 65-271.
- Sect. 3072; exemption of tools etc., of farmer, mechanic etc., from execution, does not include building used in business of photographer, though personal property: The statute intends the tools or instruments used; not the place in which they are used; *Wolden v. Stranahan*, 48-71.
- Sect. 3074; money due from boarders, for board, to boarding house keeper not exempt from execution, as earnings for personal services; *Shelly v. Smith*, 59-454. (a.)
- (a) *Brown v. Hebard*, 20 Wis., 326; *Hubner v. Chave*, 5 Pa. St., 115.
- Sect. 3076; under this section, declaration of purpose to move from the state, wagon prepared to receive household effects, part of which boxed and removed from house, is a starting to leave the state; *Graw v. Manning*, 54-721.
- Sect. 3078; exemption from execution inures to wife and children, if debtor has absconded, to avoid process or escape the jurisdiction; *Malvin v. Christoph*, 54-563.
- Sect. 3081; sale under execution, without notice, for the value of the property and the proceeds applied on execution and costs; no actual damage sustained by the owner by absence of notice; statute penalty not recoverable; *Coffey v. Wilson*, 65-272; *Enfield v. Blyler*, 67-296.

- Sect. 3086; sale under execution, set aside but levy not disturbed; *semble*, a second execution could issue under this section; *Merritt v. Grover*, 57-496.
- Sect. 3087; notice of levy of execution, only when defendant is in actual occupancy; *Bennett v. Burton*, 44-551.
- Sect. 3088; as to execution sale by defendant's division, applies to sales under special execution as well as under general execution; *Taylor v. Trulock*, 59-559.
- Sect. 3089; plaintiff purchasing at execution sale and refusing to pay costs; sheriff treat the sale as null and adjourn sale; *Reese v. Dobbins*, 51-284.
- Sect. 3097; power to set off executions entirely statutory. They must be mutual; plaintiff in one, defendant in the other, and the judgments must, in fact, belong to the respective party thereto; *Bell v. Perry*, 43-370.
- Sect. 3097; assignment to third person of one of two mutual judgments inter partes destroys their mutuality and takes them beyond this section; *Gallaher v. Pendleton*, 55-143.
- Sect. 3102; provisions apply to stay of execution taken in justice's court; *Brown v. Markley*, 58-692.
- Sect. 3102; the term "defendant" in the first sentence of the section is to be understood as describing the person holding the right to the possession as the owner of the land. It will include, for the purpose of redemption, the vendee of execution defendant; *Thayer v. Colden*, 57-114.
- Sect. 3102; the word "defendant" in this section, as to redemption from foreclosure of mortgage sale, means the mortgagor holding the title subject to the mortgage; *Nuller v. Ayres*, 59-426.
- Sect. 3102, see § 1938, 2013, 3102, 3321, ante.
- Sect. 3102, 3104; holder of lien on lands of surety for stay of execution may redeem from sale under the judgment, at expiration of stay; *Sieben v. Becker*, 53-25.
- Sect. 3102, 3106, 3118-9; conceding it to be the business of the redemptioner to determine the amount necessary to be, by him, paid on redemption and that the clerk can not make a calculation conclusive of the fact, it does not follow that redemptioner is barred of relief as against a mistake of calculation; *Wakefield v. Rotherham*, 67-447.
- Sect. 3102, 3321; purchaser at a foreclosure sale not entitled to possession until after expiration of the year for redemption; *Barrett v. Blackman*, 47-568.
- Sect. 3103; judgment debtor and the purchaser at execution sale, ordinarily, are the only persons who can object that the right of redemption has not been properly exercised; *Kilbride v. Munn*, 55-447; see *Wilson v. Conklin*, 22-454.
- Sect. 3109, gives a right which did not exist at common law, but, does not take away any prior right possessed by junior creditor; purchaser under judgment junior to a mortgage due may redeem from the mortgage and be subrogated to rights of mortgagee; *Hammond v. Leavitt*, 59-408.
- [Sect. 3112; judgment creditor's right to redeem from execution sale is barred in nine months, unless some creditor shall have redeemed within that period; *George v. Hart*, 56-708.
- Sect. 3125; execution sale of land; judgment debtor executing deed one year and twenty days thereafter, no sheriff's deed being executed; grantee takes as purchaser without notice; *M'Lean v. Anduser*, 46-43.
- Sect. 3125; failure to take sheriff's deed within twenty days after redemption period has expired not avail one with actual notice of fact of sale; *Walker v. Schrieber*, 47-533.
- Sect. 3135-49; as to proceedings auxiliary to execution, for the purpose of discovering judgment debtor's property, is not repugnant to constitution, art. 1, §§ 9, 10, as depriving one committed of his liberty without due process of law; *Eikenberry v. Edwards*, 67-621.
- Sect. 3145, subd. 6; proceeding to vacate judgment and for new trial; proceeding in nature of writ of error coram nobis, for review of case after judgment in the court

- which rendered it; change of venue not allowable; *Gilman v. Donovan*, 59-77.
- Sect. 3154; new trial granted only for error such as would reverse on appeal; *Webster v. Page*, 54-462.
- Sect. 3154; a provision, in a judgment, for the recovery of costs is an adjudication of the legal rights of the parties; the court has no power, at a subsequent term, to modify or change it, except for some cause herein enumerated; *Fairbairn v. Dana*, 68-233.
- Sect. 3154, infant within twelve months of attaining majority can have judgment modified only for error which would reverse on writ of error; *Bickel v. Erskine*, 43-222.
- Sect. 3154; judgment jointly against two; if to be set aside for fraud or casualty on application of one should be set aside as to both; *Storm Lake v. R'y Co.*, 62-220.
- Sect. 3154, a simple motion to vacate a judgment after the term at which it was rendered and for new trial, accompanied by affidavits heard without objection as to the absence of verified petition; objection can not be first made on appeal; *Storm Lake v. R'y Co.*, 62-220.
- Sect. 3154; the petition for new trial for fraud of the successful party need only set out facts constituting fraud in law; need not allege the fraud in terms; *Lefever v. Stone*; 55-49.
- Sect. 3154, subd. 1; § 3155, on hearing petition of new trial the court should order, of record, a new trial before proceeding to determine merits of the original case; *Brown v. Byam*, 59-54.
- Sect. 3154, subd. 4; 3157; one entitled to have a judgment set aside, being prevented by the fraud or procurement of his adversary; equity will, on proper showing, grant relief after the time prescribed; *Lumpkin v. Snook*, 63-517.
- Sect. 3154, cl. 5, 8., attorney appearing for minor appointed his guardian ad litem, acting through trial and no prejudice to minor shown; new trial not granted; *Webster v. Page*, 54-462.
- Sect. 3154-5; petition for new trial, for newly discovered evidence, alleging the grounds could not with reasonable diligence be earlier discovered; not demurrable; *Woodman v. Dutton*, 49-401.
- Sect. 3154, 3157, for reversing etc. judgments. not applicable, properly, to probate order for guardian's sale; *Bunce v. Bunce*, 59-530.
- Sect. 3154, 3157-8; married woman served with original notice delivering the same to her husband, claiming she supposed it did not relate to her individual rights, and both neglecting to defend can not have judgment set aside as for unavoidable casualty or misfortune; *Teabout v. Roper*, 62-604.
- Sect. 3155, where petition for new trial is filed under section, the court, without a jury, is to first try and decide upon the grounds to vacate or modify the judgment; *Carpenter v. Brown*, 50-453; *Brown v. Byam*, 59-55.
- Sect. 3155; the right to apply for new trial under this section, and the power of the court to act upon the application, within the statute period, are absolute and unconditional; subsequent appeal from the judgment on the first trial will not oust the jurisdiction; *Cook v. Smith*, 58-608.
- Sect. 3155, application for new trial, for new evidence, to be by petition, as in ordinary proceeding; *Nat. Bk. v. Murdough*, 40-27.
- Sect. 3155; petition for new trial must be filed within one year from date of judgment or decree, in the court which rendered it; not from date of affirmance of decree; *Gray v. Coan*, 48-425.
- Sect. 3155; in a case where this section provides an adequate remedy at law, a proceeding brought, thereunder, for new trial, improvidently dismissed, will bar a subsequent proceeding, in equity, to attain the same result; *Dalhoff v. Keenan*, 66-680.
- Sect. 3156, limiting proceedings to correct mistake or omissions of the clerk, or irregularity in obtaining judgment does not apply to the case of entry of judgment, nunc pro tunc; *Fuller v. Stebbins*, 49-377.

- Sect. 3157; after the time elapsed, to apply for new trial under this section equity will only grant new trial for cause shown; laches will bar relief; *Bond v. Epley*, 48-604.
- Sect. 3157, requiring petition to set aside decree must be verified is directory merely; petition not verified confers jurisdiction and petition amendable to add verification; *Rush v. Rush*, 46-656.
- Sect. 3157; insufficient petition for new trial filed within the year, amended petition filed after the year expired; the latter not deemed a more specific statement of the original, and not entitle to new trial; *Harnett v. Harnett*, 59-403.
- Sect. 3157 (Rev., 1860, § 3501); equity will set aside judgment at law and grant new trial, after a year from date of judgment, if it shown obtained by fraud and delay excused; *Dist. Towns. v. White*, 42-613.
- Sect. 3158; petition to "set aside, vacate and reverse" a judgment for fraud in procuring it; no thing triable but the question of vacating; no judgment proper on the issues in the original cause; *Brown v. Byam*, 59-55.
- Sect. 3160; petition to vacate judgment; court, may first determine whether the grounds on which petition is based are sufficient, before inquiring into validity of defense; *Niagara Ins Co. v. Rodecker*, 47-162.
- Sect. 3163-4, appeal lies from order recommitting cause to arbitrators after report filed; *Brown v. Harper*, 54-548.
- Sect. 3163-4; a cause reversed on appeal remanded to trial court for decree according to the opinion of the supreme court; leave, at nisi prius, to present additional testimony; not a final order warranting appeal; *Garmoe v. Sturgeon*, 67-701.
- Sect. 3163-5, appeal lies, to supreme court, from grant or refusal of injunction, by any judge; *Bennett v. Hetherington*, 41-149.
- Sect 3164; an appeal to supreme court lies from order striking from a pleading all allegations referring to a material issue tendered, though there be other issues remaining; *Stanley v. Davenport*, 54-465.
- Sect. 3164; a ruling, in effect, that matters pleaded in an answer constitute a defense to the action affects a substantial right of plaintiff, within this section; *Arnold v. Kreutzer*, 57-218.
- Sect. 3164, subd. 1; an appeal will not lie from a ruling made on a motion to change the place of trial of an action; *Horak v. Horak*, 68-49; *Allerton v. Eldridge*, 56-707; *Groves v. Richmond*, 58-54.
- Sect. 3165; not retroactive; appeal not lie from order of supreme court judge, made prior to Sept. 1st, dissolving injunction; *Davenport v. R. R. Co.*, 37-625.
- Sect. 3168, requiring alleged errors in trial court to be called to its attention before they can be reviewed in supreme court, applies only to such errors as might otherwise escape the attention; supreme court may review on appeal though no motion for new trial is made below; *Brown v. Rose*, 55-735.
- Sect. 3170; parties to a cause in equity, may have the same reviewed upon errors assigned; having so agreed, they may agree upon the evidence introduced and considered by the trial court; *Hutchinson v. Wells*, 67-430.
- Sect. 3173, restricting appeals to the supreme court to cases involving more than \$100, applies to cases in chancery as well as at law, and prevents their review unless upon judge's certificate; *Johns v. Pattee*, 61-391; *Andrews v. Burdick*, 62-720.
- Sect. 3173; only in civil cases the supreme court can consider questions certified by trial judge; *State v. Knapf*, 61-523.
- Sect. 3173; on appeal to supreme court, less than \$100 involved, the judge's certificate must state the question of law to be considered; *King v. Derby*, 51-12.
- Sect. 3173; judge's certificate that question of law important to be decided is involved must specify the question; *Fell v. B., C. R. & M. R. R. Co.*, 43-179.
- Sect. 3173; an action to establish a lien on and to enforce it against real estate does not involve an interest in real estate within the section; *Andrews v. Burdick*, 62-721; *Colyar v. Pettit*, 63-90.

- Sect. 3173; the right of the public to occupy land, as a highway, constitutes, an interest in land within the section; *M'Burney v. Graves*, **66-316**.
- Sect. 3173; claim less than \$100; answer alleging payment of over \$100, but not setting up counter claim; controversy as to less than \$100; *Kurtz v. Hoffman*, **65-261**.
- Sect. 3173; judgment for \$100 and costs; the costs not considered as giving a right of appeal; the amount in controversy, as shown by the pleadings, furnishes the test of jurisdiction; *Bradenberger v. Rigler*, **68-301**; see *Curran v. Coal Co.*, **63-94**.
- Sect. 3173; claim less than \$100; answer alleging payment of over \$100 and setting up counter claim; counter claim is abandoned by not offering evidence to support it and the controversy is for less than \$100; *Kurtz v. Hoffman*, **65-262**.
- Sect. 3173; not entitle unsuccessful party to certificate for appeal as a right; certificate must be made at judgment term and only when the trial judge believes is desirable to have a particular question of law, to be stated, passed upon by supreme court; *Fallon v. Dist. Towns.*, **51-207**.
- Sect. 3173; certificate of judge that a principal of law is involved that it is desirable to have the opinion of the supreme court on must be made when judgment rendered; *Independence v. Purdy*, **48-676**; see *Bartle v. Des Moines*, **37-635**.
- Sect. 3173; case involving less than \$100; judge's certificate, of question for adjudication of supreme court, must be made when judgment rendered, to give jurisdiction of appeal; *Nicely v. Rogers*, **39-442**; *Hershfield v. Nat. Bk.*, **39-699**.
- Sect. 3173; certificate of trial court, to give supreme court jurisdiction of appeal, must be made at term judgment rendered; *Lomax v. Fletcher*, **40-705**.
- Sect. 3173; notice of appeal filed six months and ten days after date of judgment too late; *Patterson v. Jack*, **59-633**.
- Sect. 3173; appeal not taken within time limited, action of trial court, in rendering judgment, not reviewable; *Bosch v. Bosch*, **66-702**; see *Cohol v. Allen*, **37-449**.
- Sect. 3176, notice of appeal of one served on co-defendant; he held to have joined in appeal unless he appears and declines; *Engleken v. Webber*, **47-559**.
- Sect. 3178; service of notice of appeal on adverse party's wife not sufficient; nor can service be made by a party to the action; *Draper v. Taylor*, **47-408**.
- Sect. 3178-9; service of notice of appeal on the clerk's deputy is service on the clerk; *Sanxey v. Glass Co.*, **68-545**.
- Sect. 3183; the objection to the non assignment of errors may be waived; it is waived by proceeding to hearing on the merits; *Andrews v. Burdick*, **62-722**.
- Sect 3183; amended assignment of errors filed at a term when the cause is otherwise ready for submission is not too late, where appellee obtains a continuance therefor; *Brown v. Rose*, **55-737**.
- Sect. 3183; assignment of errors, on appeal, not filed ten days before the first day of the term and not until appellant's argument filed; the supreme court can not consider it; *Russell v. Johnston*, **67-280**.
- Sect. 3183, 3207; the statute is peremptory; unless errors are assigned in a law action the supreme court can not consider the appeal; *Barnhart v. Farr*, **55-367**.
- Sect. 3183, 3207; the supreme court can not entertain an appeal (in a law case) where errors are not assigned; *Tizzard v. Fay*, **63-214**.
- Sect. 3184; not repealed by Stat., 1878, ch. 145; in equitable action where the evidence consists of depositions and papers on file either the judge or clerk may certify the same to the supreme court; *Cross v. R. R. Co.*, **58-66**; see *Baldwin v. Tuttle*, **23-66**.
- Sect. 3186; judgment for the possession of land; bond on appeal not conditioned to pay rents and damages pending the appeal; not in fact a supersedeas of judgment and rents and damages not recoverable; *Gill v. Sullivan*, **62-530**.
- Sect. 3190; prayer on foreclosure of mechanic's lien for a money judgment, such judgment rendered; that it is also established as a lien on the property (which amply secures it) which is ordered sold on special execution to make the amount of judg-

- ment ; does not change the character of the judgment as being for money ; *Flynn v. R'y Co.*, **62-523**.
- Sect. 3198, on reversal of judgment by supreme court judgment plaintiff is under duty to make restitution as to property of defendant sold thereunder ; action lies for recovery without demand ; *Zimmerman v. Nat. Bk.*, **56-134**.
- Sect. 3199, under this section purchaser who does not pay the full amount of his bid at execution sale is not a purchaser in good faith nor is his grantee who only repays the amount paid by his grantor ; nor is the attorney of judgment plaintiff of record in trial court and on appeal ; *O'Brien v. Harrison*, **59-689**.
- Sect. 3201-2 ; must, in the interest of justice, be considered as authorizing re-hearings in the supreme court in criminal cases ; such re-hearing may be had on petition of accused or the state ; *State v. Jones*, **64-359**.
- Sect. 3207 ; motion for new trial based on several grounds, to assign for error that "the court erred in overruling the motion" is not specific for review ; *Wood v. Whiton*, **66-370** ; *Leekins v. N. & M. Co.*, **66-473**.
- Sect. 3207 ; "the court erred in overruling plaintiff's motion for new trial" ; motion for new trial on grounds that the verdict is contrary to evidence and upon five other grounds ; assignment of error not specific ; *Stevens v. Brown*, **60-406**.
- Sect. 3207 ; assignment of error, "a new trial should have been given for the reasons set forth in the motion" not sufficiently specific ; *Morris v. R. R. Co.*, **45-29**.
- Sect. 3207 ; assignment of errors, "the court erred in overruling the defendant's objections to the report of the referee and entering judgment against the defendant" not specific, *Hoefler v. Burlington*, **59-282**.
- Sect. 3207 ; two defendants separately demurred to the petition, demurrers were sustained ; assignment of error "the ruling of the court in sustaining the several demurrers of the defendants" (naming them), insufficient ; *Bradley v. Johnson*, **67-614**.
- Sect. 3213 ; it is against the policy of the law that two actions to accomplish the same result shall be pending at the same time ; *Liebuck v. Stahle*, **66-750**.
- Sect. 3216 ; court acting to expunge its record after final judgment and after it has been signed and the party affected is out of court, at the term at which the record was made up, but, without application or notice to defendant ; certiorari will issue ; *Ins. Co. v. Duffie*, **67-177**.
- Sect. 3216 ; certiorari ; the general rule is that certiorari is not maintainable for the correction of irregularities or errors in the proceedings of supervisor's board, at the instance of one having no pecuniary interest therein ; but, § 1530, in regard to the granting of permits to sell intoxicating liquors makes an exception to the rule ; *Darling v. Boesch*, **67-704**.
- Sect. 3216-22 ; the section does not contemplate the writ shall issue to review decisions of inferior courts upon questions of fact ; *Tiedt v. Carstensten*, **61-336**.
- Sect. 3223 ; appeal lies from order awarding certiorari and stay of proceedings at hearing at which both parties appear ; *Iske v. Newton*, **54-586**.
- Sect. 3224 ; statute of limitations commences to run, as to removal of county seat, when the order is made to submit the question to vote ; *Jamison v. B'd of Super's*, **47-391**.
- Sect. 3225 ; replevin not maintainable against one who does not detain possession of property from plaintiff ; *Hove v. M'Henry*, **60-229**.
- Sect. 3225 ; personal property levied on under execution ; replevin not lie to take it from possession of officer on mere allegation that the judgment has been satisfied ; *Armel v. Lendrum*, **47-537**.
- Sect. 3225 ; replevin lie for house built on land of another with his consent, by the means of and for use of builder ; *Dist. Towns. v. Moorehead*, **43-469**.
- Sect. 3225 ; action to recover specific personal property, brought in the county of defendant's residence, not defeated merely because plaintiff fails to prove that the property is detained in that county, unless defendant applies, under § 2589, for removal of the proper county ; *Goldsmith v. Wilson*, **67-605**.

Sect. 3225, 3228; see §§ 3055, 3225, 3228, ante.

Sect. 3225 et seq.; 3230, 3233; authorize judge in vacation to punish wilful obstruction or hindrance of order as to disposition of property; *State v. Myers*, 44-583.

Sect. 3225, 3229-30; 3238-44; replevin begun where the property is, against a resident of another county, a failure to secure the property under the writ does not oust the court of jurisdiction; defendant not entitled to change of venue to county of his residence; *Laughlin v. Main*, 63-582.

Sect. 3239; an action to recover personalty wrongfully levied on and sold under execution as the property of another may be maintained against the sheriff, though he has parted with the possession under the sale; *Hardy v. Moore*, 62-68.

Sect. 3239; petition in replevin dismissed before answer; defendant has judgment for his interest in the property; but, if he files answer claiming other relief plaintiff may plead and go to trial; *Crist v. Francis*, 50-257.

Sect. 3241; plaintiff, in replevin, electing to take a money judgment, for the value of the property, does not waive his right to damages for the wrongful detention of the property, by defendant; *Cook v. Hamilton*, 67-395.

Sect. 3265; does not apply to the case of a tenant in possession of land sold under execution who sows a crop which he should know he can not reap before the expiration of redemption period; the law does not relieve against folly; *Wheeler v. Kirkendale*, 67-613.

Sect. 3268; the section does not contemplate a trial on the application for new trial; not error to refuse party to answer or controvert application; *Buena Vista Co. v. R. R. Co.*, 55-160.

Sect. 3268; the court has a discretion, under this section, to grant or refuse a new trial in an action to quiet title; that discretion is not abused by denying such new trial, it not appearing that a different result might, reasonably, be expected; *Coleman v. Case*, 66-535.

Sect. 3273; fact that petition asks other equitable relief, as to land, than to quiet title will not take the case out of the provision in regard to new trial in actions to quiet title; *Buena Vista Co. v. R. R. Co.*, 49-661.

Sect. 3273; executor in possession and control of realty for purposes of will may sue to quiet title; *Laverty v. Sexton*, 41-437.

Sect. 3277; not applicable to case of foreclosure of title bond for undivided interest in land, where co-tenant as defendant seeks partition, by cross petition, to enforce lien upon property not his; *Hammond v. Perry*, 38-219.

Sect. 3277; (title 20, ch. 3); heir having assumed payment of taxes on ancestor's lands after ancestor's death for a consideration; a lien upon his interest between heirs and grantees with notice; *Rider v. Clark*, 54-298.

Sect. 3277; (title 20, ch. 3) heir's writing, agreeing for a consideration to pay mortgage, on his ancestor's lands, no lien upon heir's interest after ancestor's death and not pleadable as defense or counter claim in action for partition; *Rider v. Clark*, 54-298.

Sect. 3282, 3297; plaintiff's attorneys fee can not be taxed as costs in a contested partition suit; *Duncan v. Duncan*, 63-150.

Sect. 3280; the judgment under this section settling and confirming the shares and interests of the parties interested in decedent's estate is the proper judgment to be reviewed, upon an appeal by parties excluded from interest in the land; *Ramsey v. Abrams*, 58-514.

Sect. 3280; in making partition the court may direct a sale, although an equal division can be made, if such division will greatly depreciate value; *Branscomb v. Gillian*, 55-236.

Sect. 3293-8; stay bond executed and filed with clerk, lost and no entry made on court records; no lien upon property of surety as against subsequent incumbrancers without actual notice; *Waldron v. Dickerson*, 52-175.

Sect. 3297; action, in form for partition, in fact to determine title; attorney's fee not

taxable and apportionable as costs, the defense not being frivolous; *M'Clain v. M'Clain*, 52-275.

Sect. 3300-1; sale by referees in partition not complete until approved and confirmed by the court; *Loyd v. Loyd*, 61-241.

Sect. 3317; right to enjoin foreclosure of chattel mortgage and to remove proceedings into court of record is not absolute; injunction not issue if a full and complete remedy exists in a pending action at law; *Sweet v. Oliver*, 56-746.

Sect. 3321; providing for redemption after foreclosure of mortgage, does not abridge the equitable right of a junior lien holder to redeem when not made a party to foreclosure proceeding; *Spurgin v. Adamson*, 62-664.

Sect. 3321; when mortgagor has disposed of his interest in the mortgage he is not a necessary party to a proceeding to foreclose the mortgage; *Johnson v. Foster*, 68-441; see *Murray v. Catlett*, 4 Gr., 108, under Code 1851, § 2084, and *Johnson v. Monell*, 13-300, under Rev., 1860, § 3661.

Sect. 3321; see §§ 1938, 2013, 3102, 3321, ante.

Sect. 3323; the manifest object of this section is to secure to the junior lien holder the right to protect his lien, by buying in the paramount incumbrance; *Grant v. Parsons*, 67-33.

Sect. 3323; junior mortgage covering all the land covered by a prior mortgage except the homestead; on tender in court to pay off the senior mortgage the junior mortgagee will take, only, an assignment thereof as to the land not included in the homestead; *Grant v. Parsons*, 67-34.

Sect. 3327; assignment of mortgage not recorded; assignee not liable to statute penalty for not releasing on record when paid; *Low v. Fox*, 56-223.

Sect. 3329, does not take away the right of vendor to declare a forfeiture stipulated for in contract of sale of land; *Land Co. v. Mickel*, 41-402; *Johnson v. Thornton*, 54-147.

Sect. 3329; does not defeat right of forfeiture and require foreclosure on contract of sale and purchase of land non obstante stipulation of parties; *La. Land Co. v. Mickel*, 41-409.

Sect. 3329, for foreclosure of contract for sale of real estate permissive only, providing a new remedy; but, not prohibiting declaration of forfeiture by vendor on vendee's default; *Mickelwait v. Leland*, 54-666.

Sect. 3329-30; vendee of real estate, under a writing conditioned to convey on the payment of the purchase price is deemed the owner, standing in the relation of mortgagor in case of conveyance and mortgage back; *Montgomery Co. v. Severson*, 64-330.

Sect. 3331; notwithstanding this section, giving a remedy at law, equity may restrain the continuance of a nuisance; *Gill v. Sullivan*, 62-530.

Sect. 3331; suit for damages occasioned by nuisance; damages assessed by jury on demand though abatement of the nuisance also asked; *Miller v. Ry. Co.*, 63-682.

Sect. 3370; the county in which a forfeited appearance bond is collectible is entitled to the proceeds, for the use of the school fund; *Lucas Co. v. Wilson*, 61-142.

Sect. 3370; criminal cause transferred, by change of venue, to an adjacent county; trial had, and on conviction fines imposed; execution to the county in which proceeding commenced collected by the sheriff thereof without levy; "collected" in the county of trial; *Pottawattamie Co. v. Carroll Co.*, 67-457.

Sect. 3386, has no application to a case where damages for a breach of contract are stipulated and the breach has occurred although the covenantor is insolvent; *Staford v. Shortreed*, 62-526.

Sect. 3388; under this section the petition being sworn to, the affidavit being that the contents thereof are true as the affiant believes is sufficient; *Kelley v. Briggs*, 58-335.

Sect. 3389; attachment in circuit court on note not due; district court not enjoin waste by defendant, *Cooney v. Moroney*, 45-293.

- Sect. 3389-94; injunctions; the word "vacation," as herein used, means when the court is not actually in session; its meaning is not restricted to the time between terms; *Thompson v. Benepe*, 67-80.
- Sect. 3391, by plain implication, authorizes a temporary injunction in actions to restrain a nuisance; *Littleton v. Fritz*, 65-489; *Pontius v. Winebrenner*, 65-392.
- Sect. 3391; requiring notice before injunction issued to stop the operations of a railway, means the operations of a constructed railroad, not of a company in constructing a road; *Johnson v. R. R. Co.*, 58-541.
- Sect. 3395; the statute contemplates, as the condition of an injunction bond, such damages as may be adjudged against the obligors in an action brought to determine whether any damages have been sustained; *Fountain v. West*, 68-381.
- Sect. 3396; to restrain the enforcement of a judgment the remedy must be sought in the court and county where the judgment was rendered; there is no exception to the rule, although the court may not have had jurisdiction; *Anderson v. Hall*, 48-347; *Grattan v. Matteson*, 51-625; discarding dictum in *Lockwood v. Kitteringham*, 42-259; see *Baker v. Ryan*, 67-710.
- Sect. 3399; injunction issued without opportunity to show cause against it; defendant may move to dissolve on answer alone and plaintiff may support petition by affidavits; *Bank etc. Co. v. Mahar*, 65-76.
- Sect. 3402; allowing but one motion for dissolution of injunction; refusal to dissolve with leave to renew motion; renewal of motion not a second motion; *Carrothers v. Mineral Spring Co.*, 31-683.
- Sect. 3408-9; the courts of this state do not have jurisdiction of a cause presented upon an agreed statement of facts—without action—unless it be shown, by affidavit, the proceeding is bona fide to determine the rights of parties thereto; *Keeline v. Council Bluffs*, 62-451.
- Sect. 3416; "civil action," as here used, includes all proceedings either at law or in chancery, except those that are of a criminal nature; *Richards v. Holt*, 61-532; see *Tomlinson v. Hammond*, 8-40.
- Sect. 3416; all controversies subject matter for a civil action, at law or in chancery, may be submitted to arbitration; *Richards v. Holt*, 61-532.
- Sect. 3419; a proceeding, in the circuit court, to condemn land for the extension of a city street, is a suit, within the section; *Marion v. Ganby*, 68-143.
- Sect. 3419; see § 476, ante.
- Sect. 3459; see §§ 205, 3459, ante.
- Sect. 3482, waiver of preliminary examination before committing magistrate will not deprive prisoner of the right, in proceeding by habeas corpus, to introduce testimony to show insufficiency of evidence to hold him; *Cowell v. Patterson*, 49-516.
- Sect. 3485; common law rule that execution can not be issued after death of judgment debtor not changed; *Welch v. Baltern*, 47-148.
- Sect. 3491; when the trial court makes a ruling, be it right or wrong, the party should submit to the ruling, take exception, or, in respectful language and manner, ask a re-consideration; if the court declines to hear him, should acquiesce, standing on his rights; to directly contradict the court, in "loud tones and insulting manner" is contempt; *Russell v. French*, 67-103.
- Sect. 3496, witness in actual contempt may be arrested on warrant directing arrest in vacation; *State v. Archer*, 48-312.
- Sect. 3496; to fail to give opportunity to one held to be in contempt of court and in its presence to file a written explanation, and to impose a penalty is to commit reversible error; *Russell v. French*, 67-103.
- Sect. 3497; a failure of the court, or judge, to comply with the requirement of this statute, to preserve and file a statement of the facts on which a commitment for contempt is based, invalidates the order of commitment; *Lutz v. Aylesworth*, 66-632; see, also, *Skiff v. State*, 2-550; *State v. Utley*, 13-593; *State v. Dougherty*, 32-261; *State v. Folsom*, 34-583.

- Sect. 3507, in action before J. P. against citizen of another county jurisdiction is not conferred by appearance of defendant; wherefore after such appearance motion to dismiss for want of jurisdiction should be sustained; *Boyer v. Moore*, 42-545.
- Sect. 3507; justice of the peace has no jurisdiction of resident of another county though he served in township where suit brought; *Hamilton v. Millhouse*, 46-75; *Boyer v. Moore*, 42-544.
- Sect. 3507; in action for recovery of money, justices of the peace have no jurisdiction of residents of another county; even though the action be aided by attachment; *Yates v. Wagner*, 46-356.
- Sect. 3507; removal of person with family to another county, for temporary purpose with intention to return; J. P. in county removed from has jurisdiction of action against him; *Bradley v. Fraser*, 54-291.
- Sect. 3507; action maintainable against one who rents a house and keeps house with his family in a county, designing to remain there until a certain job of work is completed, although his domicile may be in another county; *Fitzgerald v. Arel*, 63-107.
- Sect. 3507; does not deprive a J. P., of jurisdiction of a partnership doing business in his county, though all the partners reside elsewhere, if the suit grows out of the business of an agency established within the county, and notice is served on the agent in charge; *Fitzgerald v. Grimmell*, 64-264.
- Sect. 3507, as to jurisdiction of J. P., should be limited to natural persons, who are actual residents of some county other than that in which the J. P. resides; *Hunt v. Ins. Co.*, 67-744; see § 2584, ante.
- Sect. 3508; a judgment by a justice of the peace is valid, the parties in fact consenting to the jurisdiction, though the consent is not a matter of record; *Schlisman v. Webber*, 65-117.
- Sect. 3516-8; in suit before justice of the peace, action is commenced by service on defendant, save in replevin; *Duffy v. Dale*, 42-216.
- Sect. 3518; notice of claim on note sufficient though defendant but a guarantor; *Francis v. Bentley*, 50-60.
- Sect. 3521, see § 2532, ante.
- Sect. 3530, in action before J. P., for double damages against railroad company, for injury to stock, written petition not required; *Finch v. R. R. Co.*, 22-306.
- Sect. 3537; in justice's court, defendant appearing within an hour of the hour set for appearance; time of joining issue does not expire until plaintiff has had a reasonable time to examine answer filed and to determine his course; *Hall v. R'y Co.*, 65-258.
- Sect. 3541-2; justice of the peace on judgment by default, entitled to trial fee and fee for entering judgment; *Shaw v. Kendig*, 57-393.
- Sect. 3543, as to setting aside judgment rendered by J. P., applies only in cases where personal service is had; *Organ Co. v. Plumb*, 57-35.
- Sect. 3568, filing transcript of judgment by J. P., in circuit court, renders judgment enforceable by execution for twenty years from date of filing; *M'Coy v. Cox*, 54-596.
- Sect. 3569; judgment rendered by J. P., less than five years before the code in force, period to issue execution extended to the period of ten years; *Wood v. Haviland*, 59-476.
- Sect. 3575; limiting appeals from justices contemplates that the sum involved when the appeal is taken shall determine the right thereto; *Milner v. Gross*, 66-253.
- Sect. 3575; no appeal lies from a judgment of a justice of the peace to which one consents; *Stever v. Herald*, 61-710.
- Sect. 3575; appeal lies from judgment by default by J. P.; *Butler v. Heeb*, 38-420.
- Sect. 3580, 3594; appeal from judgment of J. P., less than \$25; the circuit court has no jurisdiction of the appeal but it may give judgment against the obligors in the bond for the amount of the judgment and costs; *Prescott v. Bacon*, 64-704.

- Sect. 3590; a cause appealed from a justice's court stands, on appeal to the circuit court, as to the amount in controversy, as in the justice's court; *Perry v. Conger*, 55-589.
- Sect. 3591; plea of payment is not a new demand or counter claim within the section; *Type Foundry v. Medes*, 60-526.
- Sect. 3596; judgment by default before J. P. and appeal; appellant has right to plead any time before cause reached for trial in appellate court in regular order, on paying costs before J. P.; *Harty v. R. R. Co.*, 54-330.
- Sect. 3596, defendant in default before J. P., on appeal entitled, as of right, to plead in appellate court at any time before cause reached for trial in regular order; *Harty v. R. R. Co.*, 54-331.
- Sect. 3597-3604, applicable only to circuit court and to civil proceedings; *State v. Flinn*, 51-134.
- Sect. 3597; appeal from judgment of justice of peace; justice without jurisdiction of subject matter; circuit court acquiesces jurisdiction by the appeal and its judgment can not be collaterally attacked; *Finch v. Hollinger*, 47-176. (b.)
- (d.) *Granger v. Clark*, 21 Me., 128; *Cook v. Darling*, 18 Pick., 393.
- Sect. 3603; circuit court may render final judgment only where no trial necessary. If, after demurrer sustained, appeal is reversed and there remains an issue to be tried, case should be remanded, not tried; *Swan v. Bournes*, 47-503.
- Sect. 3603; judgment, on a verdict, can not be rendered by a J. P., when the jury fails to find how much the plaintiff is entitled to recover; in such case, on appeal, the circuit court should set the judgment aside and remand the cause; *Bartle v. Plane*, 68-228.
- Sect. 3611; term of lease expired tenancy ceases; lessee holding over entitled to three days notice only, unless, after expiration of term, landlord has allowed the planting of a crop; *Kellogg v. Groves*, 53-395.
- Sect. 3614; see § 2015, ante.
- Sect. 3636, 4426, 4556; one indicted for criminal offense is not competent witness in his own behalf; *State v. Laffer*, 38-424.
- Sect. 3639; the word "against" in the phrase "against the executor," refers to testimony against the executor and not to actions against him; the disqualification extends both to actions by and against an executor, but only to a witness called to testify against the executor; *Leasman v. Nicholson*, 59-263.
- Sect. 3639; not apply to nor exclude the testimony of one who, at any time prior, held a mere equitable title to property in controversy; *Zerbe v. Reigart*, 42-232.
- Sect. 3639; merely inhibits examination of witness in regard to personal transaction or communication between witness and one who when examination commences is deceased, insane or lunatic; *Sweezy v. Collins*, 40-542.
- Sect. 3639; does not prohibit witness testifying to communications and transactions with former administrator in action against administrator de bonis non; *Goddard v. Leffingwell*, 40-250.
- Sect. 3639; party not competent to testify to personal transaction with deceased to rebut testimony of widow; *Canaday v. Johnson*, 40-589.
- Sect. 3639; suit by administrator; party not disqualified as witness when his testimony relates to no personal transaction or communication between him and deceased; *Sypher v. Savery*, 39-264.
- Sect. 3639; a party is not competent witness as to his transactions with decedent, though he has no interest in the issue on trial; *Williams v. Barrett*, 52-641.
- Sect. 3639; one party dead; the other may testify as to all matters save personal transactions between them; *Haverly v. Alcott*, 57-172.
- Sect. 3639; limited to transactions between witness and one deceased or insane; not applicable to contract between deceased or insane person and one not a witness; *Lines v. Lines*, 54-601.
- Sect. 3639; not exclude testimony of a party to suit that he observed no difference in

- testator's mental condition when in health and sickness; *Severin v. Zack*, 54-31.
- Sect. 3639; does not prohibit a witness, called by the executor, as to personal transaction between witness and decedent, although the witness interested in the event; *Leasman v. Nicholson*, 59-261.
- Sect. 3639, interest to disqualify witness, in administrator's suit, must be present, certain and vested; *Sheldon v. Mickel*, 40-25.
- Sect. 3639, the interest which may disqualify a witness in a case in which an administrator is a party must be present, certain and vested; *Wormley v. Hamburg*, 40-25; *Goddard v. Leffingwell*, 40-250; *Zerbe v. Reigart*, 42-232.
- Sect. 3639; witness in suit in which executor or administrator a party competent if equally interested on both sides; *Goddard v. Leffingwell*, 40-250.
- Sect. 3639; party may testify to a particular transaction with deceased to which adverse party has testified; *Wood v. Brolliar*, 40-594.
- Sect. 3639; action by administrator for rent due decedent's estate at his death; administrator testifying and tending to show implied promise to pay; defendant competent as to the agreement; *Bailey v. Keyes*, 52-91.
- Sect. 3639; testimony of administrator negative; ex. gr., that a certain transaction did not occur to his knowledge; will not let in testimony of a party as to a personal transaction with decedent; *Edwards' Estate*, 58-435.
- Sect. 3639, does not render incompetent the testimony of wife of a party to conversations between such party and one deceased at the time of examination; the section applies only to transactions and conversation between witness and deceased; *Johnson v. Johnson*, 52-589.
- Sect. 3639; suit by administrator on note; defendant's wife may testify to seeing note in husband's possession, in presence of and with knowledge of deceased; *Dougherty v. Deeney*, 41-21.
- Sect. 3639; witness, a defendant, handed to decedent money of his which witness had in his possession; decedent handed it to the wife of witness and a co-defendant; subsequent conversation, as to the money, between the wife and decedent not a personal transaction between decedent and witness; *Mayes v. Turley*, 60-409.
- Sect. 3639; action by administrator against several, on note executed to intestate; one defendant withdrawing answer under stipulation that judgment be rendered against him for an amount certain; he no longer a party and his testimony as to the transaction admissible on behalf of defendants; *Conger v. Bean*, 58-322.
- Sect. 3639; suit against administrator for service rendered decedent; plaintiff not competent to testify to facts which would raise implied contract to pay; *Peck v. M'Kean*, 45-19; *Smith v. Johnson*, 45-309.
- Sect. 3639; suit against administrator on note of decedent; wife of plaintiff incompetent to prove her services; *Ashworth v. Grubbs*, 47-354.
- Sect. 3639; proceeding to enforce judgment upon note in favor of an estate against indorser; principal debtor may testify as to transaction between deceased and indorser; *Fuller v. Lendrum*, 58-356.
- Sect. 3639; action on note and mortgage by assignee of decedent; heir competent witness as to transaction between defendant and deceased; *Sweezy v. Collins*, 40-542.
- Sect. 3639; action against heirs of wife to set aside deed as a trust to plaintiff; plaintiff not competent witness as to agreement when deed made; *Wood v. Brolliar*, 40-594.
- Sect. 3639; in action against an administrator for services rendered intestate plaintiff's testimony as to payment, or the contrary, inadmissible; *Van Sandt v. Cramer*, 60-425.
- Sect. 3639; testimony of a co-defendant, in partition by one heir against others, as to personal communications with decedent incompetent though the witness has no common interest with the other defendants against the plaintiff; *Burton v. Baldwin*, 61-285.
- Sect. 3639; action between heirs of one deceased; defendants can not testify as to personal transactions with decedent; *Neas v. Neas*, 61-643.

Sect. 3639; administrator's suit to recover property of the estate; unless the estate be insolvent, an heir of decedent has an interest and can not testify as to a personal communication with deceased other than such as the administrator has been examined as to; *Ivers v. Ivers*, 61-722.

Sect. 3639; action to set aside deed of deceased; widow not competent to testify to personal communication with late husband affecting the merits; *Palmer v. Palmer*, 62-206.

Sect. 3639; action by corporation against executor; testimony of a stockholder of plaintiff as to agreements etc. of testator not admissible; *Nat. Bk. v. Owen*, 52-109.

Sect. 3639; deposition read on one trial; objection as to incompetency of witness not heard on second trial of the cause; *M'Millan v. R. R. Co.*, 56-421.

Sect. 3639; motion to suppress deposition as incompetent, under this section, need not be filed by the morning of the second day of the first term; *Burton v. Baldwin*, 61-284.

Sect. 3639, this section in its inhibition, applies to the facts and circumstances of the transaction between the deceased and a proposed witness; it does not forbid examination of defendants, as to the day on which a certain transaction occurred; *Barlow v. Buckingham*, 68-173.

Sect. 3639, action by administratrix to recover, from children, alleged assets of decedent's estate; claim of holders of transfer by decedent, during life, in consideration of undertaking to support him; burden on the children and they incompetent as witnesses as, also, is the husband of one child who joined in the undertaking; *Samson v. Samson*, 67-256.

Sect. 3641; the lawful husband or wife is a competent witness, on behalf of the state, on trial of indictment for bigamy; *State v. Sloan*, 55-219.

Sect. 3641; amended by statute, 1873, p. 26; the husband may not testify against the wife even though he be a co-defendant and the testimony be, also, against himself; *Stephenson v. Cook*, 64-268.

Sect. 3643; it would violate the spirit of the statute to allow a physician to disclose a privileged matter stated, in his presence, to his partner; *Raymond v. R'y Co.*, 65-154.

Sect. 3643; communication made to railroad company's surgeon in answer to a question to ascertain the facts of an injury, for the better treatment of the patient, is privileged within the section; *Raymond v. R'y Co.* 65-154.

Sect. 3643; when counsel can not be required to testify to a statement made by his client, the clerk of the attorney is not compellable to disclose facts coming to his knowledge in the course of his employment; the rule goes no further; *State v. Sterrett*, 68-81.

Sect. 3649; the word "general," as used in this section, was designed to indicate the mode of proof and not to imply that a person's general moral character is good, which is bad only in one respect; *State v. Woodworth*, 59-146.

Sect. 3649; providing the general moral character of a witness may be proved as a test of credibility; "character," means reputation; testimony to show moral character independent of reputation properly excluded; *State v. Egan*, 59-637.

Sect. 3649; one who has known a defendant well and has resided in the town in which he was raised, is a competent witness to testify as to the general moral character of a witness, for the purpose of testing his credibility; *State v. Hart*, 67-144.

Sect. 3653; the books and maps referred to in this statute are such as are published for circulation among the people generally; the book, map or chart must be published in the broad sense; so that the presumption will follow that its contents are or may be generally known; compiling and filing a record in a public office is not sufficient; *Heinrichs v. Terrell*, 65-29.

Sect. 3653; a printed herd book, in which cattle in question were registered, shown

- to be a standard authority among cattle breeders, is competent to show breed and grade; *Kuhns v. R'y Co.*, 65-539.
- Sect. 3656; lease containing mutual covenants must be acknowledged by both parties to be evidence; *R. R. Co. v. Lewis*, 53-110.
- Sect. 3685-6; discretionary with trial court to grant or refuse rule to produce books of account as evidence; review only for abuse of discretion; *Sheldon v. Mickel*, 40-20.
- Sect. 3692-3; refusal to obey subpoena or to answer when brought in on the application of another to make affidavit; contempt, although the affidavit be not admissible in the proceeding in which it is sought to be taken; *State v. Seaton*, 61-560; see *Robb v. M'Donald*, 29-332.
- Sect. 3692-3; one is not bound under these sections to make an affidavit, sought only as information on which to base a civil action; *Dudley v. M'Cord*, 65-674.
- Sect. 3702; certified copy of writing not required by law to be kept in the particular public office, the certificate is not evidence of contents of original; *Morrison v. Coad*, 49-573.
- Sect. 3739; deposition may be delivered to party's attorney at the term at which cause tried, without consent of parties; *Hogaboom v. Price*, 53-705.
- Sect. 3751; motion to suppress deposition as incompetent, as being of personal transaction with one deceased etc., need not be filed by the morning of the second day of first term, under this section; *Burton v. Baldwin*, 61-284.
- Sect. 3751; where depositions are to be used on the trial of another cause between the same parties or their privies, it is necessary that they be filed in the cause, or leave to use them be obtained, before the trial is commenced; *Searle v. Richardson*, 67-173.
- Sect. 3775; district attorney entitled to per centage of fines and forfeitures collected through his agency although no money passes through his hands; *Smith v. Luin Co.*, 55-232.
- Sect. 3777; under this section a stenographer's notes of the testimony of a witness can not be used on the trial of another cause, save by first showing, as in the case of a deposition, that the witness can not be produced in court; that the witness is reputed to have left the state does not suffice; *Baldwin v. R'y Co.*, 68-39.
- Sect. 3784; limits the entire compensation of court clerk to \$2000 per year; *Washington Co. v. Jones*, 45-264.
- Sect. 3784; the compensation provided for district and circuit court clerks by this section is their total compensation; fees as member and clerk of commissioners of insanity they can not retain or recover from the county; *Moore v. Mahaska Co.*, 61-179.
- Sect. 3788; assessment, ad quod damnum, of several tracts of different owners by same jury on same day; sheriff has but one fee; *Robb v. A., K. & D. M. R. R. Co.*, 44-441.
- Sect. 3788; sheriff may charge and collect \$2 for service of execution; *Bell v. Weddington*, 54-561.
- Sect. 3788; sheriff producing prisoner in court from jail in court house not entitled to mileage; *Bringolf v. Polk Co.*, 41-535.
- Sect. 3788, sheriff conveying convict to the penitentiary by the "most direct route of travel"; to take route by which journey most speedily performed; *Magnard v. Cedar Co.*, 51-431.
- Sect. 3788, sheriff conveying convicts to penitentiary entitled to mileage for each mile traveled on the journey, going and returning; *Harding v. Montgomery Co.*, 55-43; abrogated by statute.
- Sect. 3788-9, 4735; payment for board and salary includes personal attention rendered prisoners in custody of sheriff; *Grubb v. Louisa Co.*, 49-315 (c.)

- Sect. 3700; for payment of certain fees, on the failure of a criminal proceeding, by the county, has reference only to sheriff's fees; *Red v. Polk Co.*, 56-99.
- Sect. 3700; a county is not liable for the costs in a bastardy case, under this section; *M'Andrew v. Madison Co.*, 67-55.
- Sect. 3793; allowance, by supervisors, of compensation to county treasurer, in addition to the per centage allowed, making his total compensation to exceed \$1500 per annum; void: no recovery in excess of the per centage; *Griffin v. Clay Co.*, 63-416.
- Sect. 3804; applies to costs in an action and not to fees; J. P., can not recover, from debtor, fees for collection of a claim collected without suit; *Pennington v. Beedy*, 50-85.
- Sect. 3812; providing for taxation of jury fee as costs not unconstitutional; *Adae v. Zanga*, 31-542.
- Sect. 3812, has no relevancy to the question of liability of county for jury fees in criminal cause tried therein on change of venue; *Jones Co. v. Linn Co.*, 68-64.
- Sect. 3814, is limited by Statute, 1880, ch. 207, as to payment of witness fees, in criminal cases, only to such witnesses as are subpoenaed by order of court or judge or J. P., before whom cause pending; *Kennedy v. Delaware Co.*, 59-124.
- Sect. 3814; witness subpoenaed in several causes on one day, has fee only for one day's attendance; *Hardin v. Polk Co.*, 39-663.
- Sect. 3814; professional men as witnesses not entitled to extra compensation unless used as experts; *Snyder v. Iowa City*, 40-647.
- Sect. 3818; simply intended to prevent the summoning of witnesses whose testimony is not necessary in the trial of the case; if witnesses attend, without subpoena, and their evidence is material for the defense, they are entitled to fees and the county is bound to pay them; *Jones Co. v. Linn Co.*, 68-65.
- Sect. 3818; motion for subpoena for witness at the cost of county in criminal case insufficient, the application not showing the facts expected to be proved or the materiality of the testimony; *State v. Bengé*, 61-660.
- Sect. 3825; clerk of district and circuit courts can not retain or recover from the county fees as member and clerk of commissioners of insanity; *Moore v. Mahaska Co.*, 61-179.
- Sect. 3829-30; attorney appointed to defend one charged with crime may present case on appeal and recover from county additional fee, according to price fixed for the trial below; *Baylies v. Polk Co.*, 58-358.
- Sect. 3829-30; an affidavit of an attorney appointed to defend a pauper criminal to his account presented to the board of supervisors, that it is just and true and wholly unpaid is insufficient; *Ryce v. Mitchell Co.*, 65-449.
- Sect. 3840 (Rev., 1860, § 4167): contract of sheriff to receive gross sum in lieu of fees for certain service against public policy and contrary to statute; void; *Gilman v. D. V. R. R. Co.*, 40-203.
- Sect. 3841; as to costs, applies only to cases where jurisdiction is thrust upon a county without act of its own; ex. gr., by change of venue; *Floyd Co. v. Cerro Gordo Co.*, 47-186.
- Sect. 3841, 4381, 4386, on change of venue, in a criminal cause, the county in which the offense was committed is liable to the county of trial for all jury fees; *Jones Co. v. Linn Co.*, 68-64.
- Sect. 3848; an indictment for murder must charge that the killing was with "malice aforethought;" but, it is not essential that these identical words be used; it is sufficient if words of the same import are used; or if, from the language used in the indictment, it clearly appears that malice aforethought is charged or can, without doubt, be implied; *State v. Thurman*, 66-694.
- Sect. 3849; to constitute murder in the first degree, it not being committed in the perpetration or attempt to perpetrate one of the felonies enumerated, it must be, not only deliberate and premeditated, but, also, wilful; *State v. Townsend*, 66-742.

- Sect. 3858; not necessary the means used to put party in fear should be such as to put in fear a man used to the ways of the world; *State v. Carr*, 43-421.
- Sect. 3858; sudden snatching of purse or property from the hand involves sufficient force and violence; *State v. Carr*, 43-423.
- Sect. 3863; prosecutrix so destitute of mind as to be incapable of consent; conviction of rape non obstante section; *State v. Atherton*, 50-191.
- Sect. 3864; crime of attempting to produce abortion complete if made at any time during pregnancy; *State v. Fitzgerald*, 49-261.
- Sect. 3867; seduction; the term "character," as used, refers to moral qualities and not to reputation; evidence of reputation not admissible as to woman's character; but, only to discredit or support testimony tending to establish lewd acts; *State v. Prizer*, 49-532.
- Sect. 3870; exposure of child; word "and" may be construed to mean "or" and offense charged may be committed by either parent; *State v. Smith*, 46-672.
- Sect. 3871; compelling payment of indebtedness by threats of violence, criminal, although the object and purpose of the threats have been accomplished; *State v. Hollyway*, 41-204.
- Sect. 3877 (Rev., 1860, § 3160); judgment on service by publication not set aside unless plaintiff in original cause made party; *Hulverson v. Hutchinson*, 39-318.
- Sect. 3891; indictment for burglary charging breaking and entry to commit a public offense; sufficient; *State v. Short*, 54-332.
- Sect. 3891, 3894; an indictment for burglary under section 3891 would differ but little from an indictment under section 3894 without the use of some of the qualifying words used in section 3894; *State v. Franks*, 64-41.
- Sect. 3895; constituting it larceny to dispose of mortgaged chattels without consent of the mortgagee, does not render a second mortgage thereof void; *Tootle v. Taylor*, 64-632.
- Sect. 3895; stipulation if mortgagor removed the chattel from the county mortgagee might take possession and sell; removal to and sale in another state not indictable in county where mortgage executed; *State v. Julien*, 48-446.
- Sect. 3908; indictment for embezzlement of public funds must charge both the conversion and failure to account; *State v. Parsons*, 54-407; see *State v. Brandt*, 41-600.
- Sect. 3909; unlawful appropriation of money by agent or employe not authorized to receive it not punishable as larceny, although the person paying it believed there was authority to receive; *State v. Johnson*, 49-142.
- Sect. 3909; embezzlement, from a corporation, may be committed by an agent who is under sixteen years of age; an allegation in an indictment that he is over that age is but surplusage; *State v. Goode*, 68-595.
- Sect. 3911; the crime may be by receiving stolen property, knowing it to be stolen or by knowingly receiving property obtained by burglary or robbery; *State v. Lane*, 68-385.
- Sect. 3910; embezzlement by carrier limited to property delivered to be carried for hire; conversion of property delivered for storage not within the section; *State v. Stoller*, 38-322.
- Sect. 3914; indictment for larceny of bank clerk; allegation "of the value of \$20.97" sufficiently avers value; *State v. Pierson*, 59-272.
- Sect. 3915; providing for the punishment of larceny of property from the hand of officers holding by virtue of legal process; a receiver is not an officer within the statute; *State v. Rivers*, 60-383.
- Sect. 3917; to constitute forgery, in falsely making or uttering an order for the payment of money, it is not necessary that payee or drawee be named in the instrument; *State v. Bauman*, 50-70. (*d.*)
- (*d.*) *Evans v. State*, 8 Oh. St., 197; *People v. Brigham*, 3 Mich., 550; *Chidester v. State*, 25 Oh. 433; *People v. Stearns*, 21 Wend., 409; *Noakes v. People*, 25 N. Y., 380.

- Sect. 3951-2; a forged note deposited as collateral security by the forger in the hand of a bona fide lender; the holder, on payment of the debt, may lawfully deliver the forged note to the depositor, although such delivery, of necessity, enables the wrong doer to suppress the paper and, to that extent, hinders his prosecution; *Deere v. Wolff*, 65-37.
- Sect. 3952; one can not be, directly or collaterally, adjudged guilty of compounding a felony unless it has been established that the other party to the compact is guilty of the felony; *Deere v. Wolff*, 65-39.
- Sect. 3960; a receiver of a court having jurisdiction, required by order to take possession of property, is an officer within this section, and any person knowingly and wilfully resisting or opposing him in the execution of such order is guilty hereunder; *State v. Rivers*, 64-735.
- Sect. 3960; one who resists a receiver in the execution of an order of the court is indictable; *State v. Rivers*, 64-729; S. C., 66-654.
- Sect. 3968; a crime in county auditor to give false certificate of the receipt by treasurer of a sum in payment of interest on loan of school fund; *State v. Morse*, 52-510.
- Sect. 3977; under this section malice against owner personally not essential; malicious act with intent to injure the owner constitutes the offense; *State v. Lynde*, 54-142.
- Sect. 3977; maiming of a horse wilful and wanton and no reasonable excuse shown; the law implies malice toward the owner; *State v. Williamson*, 66-353.
- Sect. 3979; indictment for obstructing railroad track need not aver the malicious placing of obstruction which actually obstructed or hindered train; *State v. Clemens*, 38-257.
- Sect. 4008; the provision that "no prosecution for adultery can be commenced but on complaint of the husband or wife" means the husband or wife of the person sought to be prosecuted; not the husband or wife of the other party to the act, against whom complaint is not made; *Bush v. Workman*, 64-206.
- Sect. 4008; complaint is not made, under this section, by a wife who testifies before a grand jury, supposing she is obliged to do so, but, not intending to prefer charges against the husband; *State v. Donovan*, 61-279.
- Sect. 4008; husband or wife commencing a prosecution for adultery by information before a magistrate; a conviction may be had, though the complaining witness shall not voluntarily act further, *State v. Briggs*; 68-419.
- Sect. 4008; an averment in an indictment for adultery, that the action was commenced by the wife of defendant, is not presumptive of its truth; the fact must be proved; *State v. Henke*, 58-459.
- Sect. 4009; the crime of bigamy is committed by cohabitation under the bigamous marriage, as well as by the marriage itself, wherever the marriage was contracted; *State v. Sloan*, 55-218.
- Sect. 4009; prosecution for bigamy not barred by reason of marriage in Iowa over three years before indictment found, the parties to the bigamous marriage continuing to cohabit until that time; *State v. Sloan*, 55-218.
- Sect. 4012; sexual intercourse secretly indulged in between a man and woman living in the same house, ostensibly as master and servant, and the birth of a child to the woman, during the existence of the relationship, are matters to be considered in determining guilt of lewd cohabitation; *State v. Fitzpatrick*, 63-557.
- Sect. 4013 on trial for keeping a house of ill fame under this section, proof of prior conviction under section 4091, not charging the keeping of a house of ill fame, inadmissible to establish a former conviction for a like offense, to increase penalty; *State v. Holmes*, 56-591.
- Sect. 4023; a J. P. has jurisdiction of the offense of disturbing a worshipping congregation; *State v. Orton*, 67-554.
- Sect. 4026; indictment for keeping a house etc., "under his care and control in which" etc., he "did permit and suffer" persons unknown "to play" etc., sufficient

to charge permitting gambling; *State v. Kaufman*, 59-273; see, under Code, 1851, *State v. Middleton*, 11-246.

Sect. 4028; offering a premium is not a bet or wager within provisions of the section or in violation of public policy; *Deller v. Agric. Soc.*, 57-485.

Sect. 4028; persons playing billiards, loser to pay for use of table; proprietor of house keeper of house resorted to for purpose of gambling; *State v. Book*, 41-552. (e.)

(e.) *State v. Leighton*, 3 *Fost. (N. H.)*, 167; *Ward v. State*, 17 *Oh. St.*, 32.

Sect. 4028; playing billiards, loser to pay for use of table, gambling; *State v. Miller*, 53-155.

Sect. 4028-9; promissory note given for money lost in a gambling contract is absolutely void; transferring it to an innocent owner for value before due gives it no validity; *Frazer's Bk. v. Alsop*, 64-100 (f.)

(f.) *Lowe v. Waller*, 2 *Doug.*, 736; *Bridge v. Hubbard*, 15 *Mass.*, 96; *Vallett v. Parker*, 6 *Wend.*, 615; *Kendall v. Robertson*, 12 *Cush.*, 156; *Cazet v. Field*, 9 *Gray*, 329.

Sect. 4055; contract for sale of sheep, sheep infected, can not be enforced by seller although buyer had knowledge of their condition at time of purchase; unless the seller was not aware the disease affecting the animals was contagious; *Caldwell v. Bridal*, 48-16.

Sect. 4074; as to fraudulent conveyances; the intent in fact as distinguished from intent presumed in law, must be established; *Lillie v. M'Millan*, 52-164.

Sect. 4088; warehouse receipt for grain "to be stored until he [holder] is ready to sell;" shipment by bailee beyond the state while receipt outstanding a crime; consent of bailor no defense; *State v. Stevenson*, 52-701.

Sect. 4091; to bring prescribed acts within this section they must be carried on or permitted at the house kept by accused; *State v. Dieffenbach*, 47-641.

Sect. 4091; a saloon keeper who but once permits drunkenness, quarreling, fighting and breach of the peace in his saloon, to the disturbance of others, is guilty of keeping a nuisance; *State v. Pierce*, 65-87.

Sect. 4091; disorderly house; to convict the disorder may be outside, in front, the character of the house attracting disorderly persons; *State v. Pierce*, 65-88; see *Rev.*, 1860, § 4411, ante.

Sect. 4091; conviction not authorized, under this section, of one who kept for sale wine of his own manufacture, he living on a farm, and that persons buying from him drank it, became intoxicated while on the highways and disturbed peace of neighbors a mile and a half away from his house; *State v. Dieffenbach*, 47-639.

Sect. 4091; competent to charge in one indictment the various acts enumerated in section, constituting the nuisance; *State v. Spurbeck*, 44-668; *State v. Dean*, 44-650.

Sect. 4091; indictment for keeping house of ill fame etc., "and at which prostitution and lewdness were carried on and permitted, to the disturbance of others," sufficiently charges nuisance under section; *State v. Odell*, 42-76.

Sect. 4091; indictment omitting "to the disturbance of the peace of others" fails to charge a nuisance under this section; *State v. Dean*, 44-650.

Sect. 4092; one committed under this section may be imprisoned, until fine paid, at one day for every 3½ dollars and defendant not entitled to credit on judgment there for. If sentenced to labor he entitled to credit of \$1.50 a day on judgment; *State v. Jordan*, 39-390.

Sect. 4097; language to the effect that plaintiff had, by entering into a combination, for that purpose, reduced the price of grain, at a place where they did business, not actionable per se; *Achorn v. Piper*, 66-695.

Sect. 4097-8; in civil action the petition need not aver a charge of the commission of a statutory offense or allege special damage; sufficient if it states facts constituting libel within these sections; *Call v. Larabee*, 60-214.

Sect. 4126; one recognized to keep the peace, demanding trial at next term of district

- court, complainant not appearing; court may refuse trial, discharge defendant and charge costs against him; *State v. White*, 47-557.
- Sect. 4160; where a county takes jurisdiction of a public offense committed in another county within 500 yards of its boundary, it can not recover expenditures of prosecution from the county in which the offense was committed; *Floyd Co. v. Cerro Gordo Co.*, 47-186.
- Sect. 4167; statute limitations; the provision that no period during which the party charged was not a resident of the state is a part of the limitation, applies equally to all offenses; *State v. McIntire*, 58-573.
- Sect. 4174; for the extradition of a fugitive from justice the affidavits must exhibit facts, not a conclusion of law; ex. gr., that one is a fugitive from justice; *Jones v. Leonard*, 50-108.
- Sect. 4212; this section does not preclude the right of an officer making an arrest to take from the prisoner any property which might be used in effecting an escape, or is connected with the crime charged, or which might serve to identify the prisoner; *Exch. Bk. v. McLeod*, 65-667.
- Sect. 4238; applicable only to preliminary examination of persons charged with crime; *State v. Red*, 53-70.
- Sect. 4256; see § 244, ante.
- Sect. 4274; bill, by owner in possession of realty against adverse claimants, to quiet title; general prayer will entitle to relief if petition embodies essential averments and is sustained by proofs, non obstante bill not framed with especial reference thereto; *Paton v. Lancaster*, 38-406.
- Sect. 4283; this section does not require the minutes of a preliminary examination to be filed with the district court clerk if the defendant was discharged at such examination; *State v. Helvin*, 65-290.
- Sect. 4292; requiring the fact that an indictment is found at the instance of a private prosecutor to be indorsed on the indictment, by the grand jury, is directory; indorsement not essential to validity; *State v. Briggs*, 68-422.
- Sect. 4293; that the minutes of evidence, on which an indictment was found, are not filed with the clerk of court, is no ground of demurrer to the indictment; *State v. Briggs*, 68-422.
- Sect. 4297; indictment not invalid because the statute form not followed in giving a title to the action and stating names of parties in order prescribed; *State v. McIntyre*, 59-265.
- Sect. 4297; indictment in the form prescribed by this section not defective for omitting the word "as," as identifying the county of the offense, in the phrase "in the county as" aforesaid; *State v. Lillard*, 59-479.
- Sect. 4297; does not require an indictment to be signed by the district attorney; *State v. Ruby*, 61-87.
- Sect. 4300; the term "compound offenses" refers only to cases where the same act constitutes, in itself, more crimes than one; it does not include cases, in which two or more crimes are committed in succession; *State v. Ridley*, 48-372.
- Sect. 4300; under this section, an indictment for conspiracy may state the facts constituting the offense in different ways in several counts; *State v. Kennedy*, 63-200.
- Sect. 4300; rape and incest can not be charged in an indictment as a compound offense; *State v. Thomas*, 53-215.
- Sect. 4300; one indictment can not charge forgery and uttering forged paper; two distinct offenses; *State v. McCormick*, 56-586, overruling *State v. Nichols*, 38-110; followed *State v. Henry*, 59-392.
- Sect. 4302; mistake, in indictment for robbery, of name of prosecutor, immaterial unless defendants misled thereby; *State v. Carr*, 43-420.
- Sect. 4392; indictment for an assault with intent to kill one "Cameron"; evidence showing one "Cannon" was assaulted; variance immaterial, prejudice not being shown; *State v. Crawford*, 66-319.

- Sect. 4302; burglary is an offense against the possession; the common law rule, that the ownership shall be laid in the tenant or person in possession is not changed; but, probably, it is immaterial whether the ownership be laid in the landlord or tenant, if the offense be, in other respects, sufficiently described; *State v. Rivers*, 68-618.
- Sect. 4302, 4305, subd. 6; indictment for burglary may charge the person injured to be unknown and averment that the property—a railroad car—was in the control of a particular railroad company avers a special property in the company; *State v. M'Intyre*, 59-206; *State v. M'Intire*, 59-269.
- Sect. 4306; indictment charging an intent to kill the "defendant"; the meaning certain and other allegations charging the offense; error properly disregarded; *State v. Crawford*, 66-310.
- Sect. 4350; defendant in a criminal case can not waive a jury and submit to a trial by the court alone; such a trial and the conviction thereunder are without jurisdiction and void; *State v. Carman*, 63-131.
- Sect. 4358; neglect to plead, after demurrer overruled and trial had though a plea "not guilty" had been entered; irregularity without prejudice and conviction sustained; *State v. Greene*, 66-12.
- Sect. 4374; application for a change of venue on ground of prejudice of the judge, a case for change made if true; the judge may consult his own feelings as to the truth thereof and the supreme court will not disturb the ruling unless prejudice be shown; *State v. Foley*, 65-52; see Code, 1851, § 4733.
- Sect. 4381; on change of venue, in criminal cases; indorsement of successor of trial judge, recommending payment of sheriff's bill for services, not an auditing thereof to bind county; *Barnes v. Manon Co.*, 54-484.
- Sect. 4381; see §§ 3841, 4381, 4386, ante.
- Sect. 4386; see §§ 3481, 4381, 4386, ante.
- Sect. 4391; waiver of right to object to absence of jurors, during progress of criminal trial, by neglect to have jurors called and attachment issued to bring in absentees at time indictment called for trial; *State v. Miller*, 53-87.
- Sect. 4397; see §§ 227, 4397, ante.
- Sect. 4402; court may direct form of presenting evidence on trial of challenge to panel of jurors; *State v. Lynde*, 54-141.
- Sect. 4405, subd. 11; no opinion formed as to guilt or innocence; opinion formed as to some transactions in the case; can render impartial verdict on evidence; juror competent; *State v. Bryan*, 40-380.
- Sect. 4421; is superseded by Stat., 1880, ch. 130, § 5; so far as to render a witness, whose testimony has been properly taken and returned by the examining magistrate and whose name has been placed on the indictment, a competent witness without having testified before the grand jury; *State v. Rodman*, 62-458.
- Sect. 4421; in a criminal case, after jury empanelled and sworn, the witnesses for the state not having been examined before the grand jury nor the notice, required by the section, given, the court may, properly, require the defendant to allow a continuance or that the witnesses testify; *State v. Parker*, 66-587.
- Sect. 4427; admissions of commission of crime—of larceny—out of court; in absence of other evidence conviction not sustained; *State v. Dubois*, 54-364.
- Sect. 4440; requiring instructions to be signed by the trial judge is directory; failure to comply error only when party prejudiced thereby; *State v. Stanley*, 48-224.
- Sect. 4466; one may lawfully be found guilty of the first offense, of unlawful sale of intoxicating liquors, on an indictment charging a third offense; *State v. Gaffen*, 66-263.
- Sect. 4465-6; an assault, whether with intent to murder, maim or inflict a great bodily injury, is included in the crime of murder; the intent with which the assault committed does not exclude it; *State v. Parker*, 66-589.

Sect. 4490; prosecution by information, for keeping intoxicating liquors for unlawful sale; criminal; no new trial to state; *State v. Intox. Liq.*, **40-96**.

Sect. 4496; object of section is that defendant may be advised of time allowed him to prepare application for new trial or motion in arrest or, in case of plea of guilty, that he may produce any evidence in mitigation; *State v. Stevens*, **47-277**.

Sect. 4496; plea of guilty on last day of term, continuance without objection; presumed court adjourned in less than six hours and continuance by consent; *State v. Stevens*, **47-277**.

Sect. 4509; this statute does not contemplate that the convict shall, himself, control and direct the manner of the enforcement of a judgment against him, by choosing to serve in jail for a part of his fine and to pay the balance of it in money; *Galles v. Wilcox*, **68-665**.

Sect. 4511, judge on rendering judgment of imprisonment for fraud or larceny omitting to fix bail; defendant entitled to have omission corrected; not to discharge from custody on habeas corpus; *Murphy v. M'Mullan*, **59-515**.

Sect. 4513; two sentences each are year in penitentiary, judgment not fixing which term first to commence; terms not run concurrently, one commences when the other ends; *Mier v. M'Millan*, **51-241**.

Sect. 4538, does not require supreme court, in criminal case, to examine transcript to determine whether the verdict is sustained by evidence or as to errors in instructions where defendant is represented by counsel and has not applied to waive rules of court, or so to modify as to permit an abstract in manuscript; *State v. Day*, **58-680**.

Sect. 4556; one held to keep the peace in preliminary examination on information for threat to commit offense, not competent witness for himself; *State v. Darlington*, **47-519**.

Sect. 4559; a conviction can not be had on the testimony of an accomplice, unless it be corroborated by other testimony tending to connect defendant with the commission of the offence; but, if there be such testimony the jury is to judge as to its sufficiency; *State v. Dietz*, **67-222**.

Sect. 4560; defendant's confession of sexual intercourse with the woman tends to corroborate her testimony; *State v. Fitzgerald*, **63-272**.

Sect. 4560 (Rev., 1860, § 4103); seduction; a fact testified to by injured person alone not admissible to corroborate her; *State v. Kingsley*, **39-439**.

Sect. 4593-4; bail required to make arrest or authorize another to do so; such duty not imposed on sheriff; sheriff's duty to receive and detain party delivered to him; *State v. Kraner*, **50-583**.

Sect. 4599; venue changed in criminal case; bail bond put in suit, recovery must be in the county to which venue changed, not in county from which trial removed; *Lucas Co. v. Wilson*, **59-356**.

Sect. 4600, supreme court not meddle with discretion to remit etc. forfeiture of bail bond on surrender etc. of principal, save for abuse; *State v. Hirronemus*, **50-548**; *State v. Kraner*, **50-577**; *State v. Kraner*, **50-584**; see *State v. Scott*, **20-66**.

Sect. 4601; surety on bond, for appearance of one held to answer, discharged on principal's arrest on warrant issued on indictment found; *State v. Orsler*, **48-344 (g.)**

(*g.*) *Smith v. Kitchens*, 51 Ga., 153.

Sect. 4660; see § 506, ante.

Sect. 4670-1, relating to changes of venue in criminal cases triable in justices' courts; the requirement, in § 4671, that the justice shall transmit the papers to the next nearest J. P. against whom none of the above objections exist, refers only to the objections enumerated in the section; not to objections named in section 4670; *Albertson v. Kreichbaum*, **65-14**.

Sect. 4671; on change of venue granted in a cause pending before a J. P., it is no reason why it is not taken to the next nearest justice that he is a material witness in the case; *State v. M'Evoy*, **68-257**.

- Sect. 4691; this section invests the J. P. with a discretion; his conclusion, taxing the prosecuting witness with costs of prosecution before him, can not be reversed by the district court save for an abuse of discretion; *State v. Kerns*, 64-307.
- Sect. 4691, 469-7; appeal in criminal case from J. P. must be taken on the day and at the time judgment is rendered; it is taken by defendant's oral notice to the J. P.; *State v. Knapf*, 61-524.
- Sect. 4697, where J. P. informs defendant of his right to appeal and defendant gives requisite notice, appeal is taken; *Anderson v. Park*, 57-70.
- Sect. 4697; an appeal to district court will lie from mayor of town, incorporated under general law, in matter of violation of ordinance; *State v. Hoag*, 46-338.
- Sect. 4697, 4702, writ of error not lie from district court, to inferior court, in criminal case; *State v. Flinn*, 51-134.
- Sect. 4715-22, bastardy act; proceeding hereunder is a civil action; *M'Andrew v. Madison Co.*, 67-55.
- Sect. 4720; conviction for bastardy may be on unsupported evidence of prosecutrix; *State v. M'Glothen*, 56-545.
- Sect. 4727, 4735; sheriff may purchase on credit of his county articles required to be kept for the use of prisoners in jail and an action will lie to him who furnishes the same against the county; *Feldenheimer v. Woodbury Co.*, 56-379.
- Sect. 4727, 4735; the sheriff has power to bind the county for necessaries for a prisoner in custody awaiting preliminary examination; and the county is liable in a case where the prisoner, owing to the circumstances; ex. gr., wounded while being arrested; can not be safely confined in jail; *Miller v. Dickinson Co.*, 68-104.

STATUTES, 1874.

- Chap. 6; see Code, 1873, § 464, ante.
- Chap. 7, amending Code, 1873, § 464, confers upon cities power to grant right to construct and operate railways upon streets at discretion, subject only to equitable control and proper police regulations; *O'Neil v. Lamb*, 53-729.
- Chap. 8; proceeding to establish a lost corner is a special proceeding, triable as an ordinary action and reviewable on errors assigned; *In re Harrington*, 54-35.
- Chap. 8; in a proceeding to establish a lost corner, on appeal a bill of exceptions is not necessary to preserve the evidence; such evidence must accompany the commissioner's report; *Davis v. Curtis*, 68-68.
- Chap. 8, § 2, providing summary process for determining and locating boundary line between land owners, without issue in court or jury trial, not in conflict with Constitution, art. 1 § 6; *Gates v. Brooks*, 59-513.
- Chap. 8; providing proceedings for the establishment of lost boundaries not invalid in not providing for a jury trial; *Coombs v. Quinn*, 66-470.
- Chap. 8, as to establishing boundary line, contemplates evidence to be received by commissioner and survey to be made in light thereof; failure to produce material evidence, by reason of want of knowledge, cause to set his report aside; *Nesselroad v. Parrish*, 52-271.
- Chap. 8; jurisdiction of action to establish boundary line, on notice by publication, only acquired by record showing owner unknown and non resident; these facts may be shown by affidavit; *Nesselroad v. Parrish*, 52-270.
- Chap. 8; a commission to establish boundaries is proper only where a boundary, as called for by deeds, is to be discovered by survey and each party's claim is supposed to be conditioned on the discovery of the boundary; *Smith v. Scoles*, 65-736.
- Chap. 8; on hearing petition to appoint a commission to establish boundaries the court may dismiss the petition, if the controversy seems not to justify the appointment; such dismissal is appealable and the order bars another action, between the parties, for the same purpose; *Smith v. Scoles*, 65-736.
- Chap. 8; the court may reject the conclusion of the commissioner to locate a lost corner and, upon the evidence reported, establish it elsewhere; *Coombs v. Quinn*, 66-470.

- Chap. 8, § 2, surveys; division line between owners in dispute, but previously fixed by county surveyor; owner may maintain proceeding to establish line; *Strait v. Cook*, 46-50.
- Chap. 17; prosecution for defacing a highway; evidence that the change made by defendant was to its improvement and not to its injury is inadmissible; *State v. Hunter*, 68-148.
- Chap. 23, assuming to give holders of bonds, issued in excess of constitutional limit, a lien for materials furnished, void; *Mosher v. Ind. Sch. Dist.*, 44-124.
- Chap. 26; husband not liable for expense of treatment of wife sent to insane hospital; county has no recovery against him; *Delaware Co. v. M'Donald*, 46-170.
- Chap. 32, providing for taxation of jury fee as costs not unconstitutional; *Adae v. Zangs*, 41-542.
- Chap. 32, taxing \$24 per day. jury fees, as costs; constitutional; *Steele v. Centr. R. R. of Ia.*, 43-111; see *Adae v. Zangs*, 41-536.
- Chap. 34; is not in conflict with constitution, as being for the appropriation of private property to public use; *Phillips v. Watson*, 63-31.
- Chap. 34; authorizing certification of lands to Sioux City & St. P. R. R. Co. not pass title until after lands certified by governor; they not taxable until certified; *R. R. Co. v. Osceola Co.*, 50-178.
- Chap. 34, vested legal title to public grant of May 1864, in Sioux C. & St. P. R. R. Co., and lands became taxable; prior taxation void; *S. C. & St. P. R. R. Co. v. Osceola Co.*, 43-323.
- Chap. 35; to entitle riparian owner to damages for the appropriation of banks of Miss. or Mo. rivers, by railroad company, it is not necessary the owner shall have built pier or crib; *Renwick v. R. R. Co.*, 49-668.
- Chap. 44; amending Code, 1873, § 2142, the assignment of an instalment due a mechanic for work, before contract completed, not carry a right to mechanic's lien on property; *Merchant v. Water P. Co.*, 54-454.
- Chap. 44; mechanic's lien passes by assignment of the debt only when lien perfected by filing claim; *Brown v. Smith*; 55-32; *Langan v. Sankey*, 55-54.
- Chap. 44; prior to this statute, assignment of claim not transfer mechanic's lien; *Nat. B'k v. Day*, 52-681.
- Chap. 47; by implication, withdraws the power granted by Code, 1873, § 1262, to railroad companies, to occupy city streets with their tracks; *Stanley v. Davenport*, 54-466.
- Chap. 47; see Code, 1873, § 1262, ante.
- Chap. 48, private and local acts; railroad aid tax voted is assignable; *Merrell v. Welsher*, 50-71.
- Chap. 49, § 1; see Code, 1873, § 2131, ante.
- Chap. 51; has reference alone to the improvement of alleys; *Bucroft v. Council Bluffs*, 63-648.
- Chap. 60, § 28; for the taxation of the capital of savings banks, does not discriminate against national banks; *Nat. Bk. v. B'd Equaliz.*, 64-141.
- Chap. 60; savings bank organize thereunder; so much of capital as is invested in U. S. bonds not taxable; *Sav. B'k v. Burlington*, 54-611. (*h.*)
- (*A.*) *Bk. of Com. v. N. Y.*, 2 Black, 620; *Bank Tax Ca.*, 2 Wall., 200.
- Chap. 60, semble, the statute requires the taxation of all assets of a savings bank resulting from payments made on stock subscriptions and payments on other obligations set apart as capital; *Nat. Bk. v. B'd Equaliz.*, 64-145.
- Chap. 63; amending Code, 1873, § 812; deposits in bank taxable to depositors, not to bank; *Branch v. Marengo*, 43-601.
- Chap. 65; as to abandonment of railroad constitutional; *R. R. Co. v. R. R. Co.*, 57-253.
- Chap. 65; see Stat., 1870, ch. 91, ante.
- Chap. 65; see Code, 1873, § 1260, ante.

- Chap. 65, amending Code, 1873, § 1260, as to abandonment of railroad line, contemplates there may be an abandonment of part of a constructed road; *C. I. R. Co. v. R. R. Co.*, **57-252**.
- Chap. 68; is unconstitutional, so far as it includes contracts for the transportation of freight to points out of the state—if it does so; *Carton v. R. R. Co.*, **59-150**.
- Chap. 68, § 10, to authorize a recovery, under this section, against a railroad company for discrimination in charges as between shippers of stock, it must be shown that the shipments were made under like conditions; *Paxon v. R. R. Co.*, **56-490**.
- Chap. 68; action, to recover forfeitures provided therein, is an action to recover a statute, penalty; the provision criminal rather than remedial; limitation for recovery of statute penalties applies; two years; *Herriman v. R. R. Co.*, **57-189**.
- Chap. 68; an agent of a railroad company who, as a shipper of goods, collects from himself freightage in excess of that provided by the statute and pays the same over to the company, can not recover the penalty provided by the statute; *Steever v. R'y Co.*, **62-374**.
- Chap. 70, § 5; casting a furrow round eighty acre track, cultivating three acres and breaking eight acres does not constitute the tract "improved" land under the statute; *Otis v. Morgan*, **61-718**.
- Chap. 123; authorizing cities, townships and incorporated towns to aid in construction of railroads, not unconstitutional; *Renwick v. Dav. & N. W. R'y*, **47-512**, following *Stewart v. Polk Co.*, **30-9** stare decisis.
- Chap. 76; increasing compensation of clerk of penitentiary at Fort Madison, did not have effect to increase compensation of clerk of additional penitentiary at Anamosa; *Kinsey v. Sherman*, **46-465**.

STATUTES, 1876.

- Chap. 6; see Code, 1873, § 390, ante.
- Chap. 24; city or town, incorporated under general law, powerless to ordain as a regulation of sale of wine and beer, as a condition of granting license, that licensee shall not sell liquors prohibited by state law to be sold, or permit gambling on the premises occupied, and imposing penalties to be collected on bond of licensee; *New Hampton v. Conroy*, **56-490**.
- Chap. 47, amended by Stat., 1884, ch. 158, confer upon cities, acting under special charters, the power to extend their boundaries, by including territory not laid off into lots of two acres or less; *Glass v. Cedar Rapids*, **68-208**.
- Chap. 47, § 4 amended by Stat., 1873, ch. 169; land of less than twenty acres, not divided by city streets, platted into lots or held for speculative purposes, but occupied by the owner for house, cultivation and pasture, within a city; not taxable for city purposes; *Winzer v. Burlington*, **68-282**.
- Chap. 47; see Code, 1873, § 43; ante.
- Chap. 59; making it unlawful for the keeper of a billiard saloon or his employes to permit minors to remain therein; conviction may be had without proof of defendant's knowledge of the minor's presence or minority; *State v. Probasco*, **62-402**.
- Chap. 59; if the keeper fails to enforce watchfulness of his employe and thus a minor is allowed to remain in the saloon, both employer and employed are guilty; *State v. Probasco*, **62-404**.
- Chap. 79; no bidders for a tract of land at tax sales during several years; subsequent sale for less than the taxes due; to redeem, owner must pay all taxes due with interest and penalties; *Soper v. Espeset*, **63-330**.
- Chap. 100; filing statement of sub-contractors account with clerk of court not entitle to lien, unless written notice of filing given to owner, agent or trustee; *Lounsbury v. R. R. Co.*, **49-256**.
- Chap. 100; prior to this statute a mechanic's lien had priority over an existing incumbrance on the land, the remedy was by sale and removal of building; if irremovable

the lien postponed to the lien on land; *Conrad v. Starr*, **50-479** (i.); *Nat. Bk. v. Elmore*, **52-552**.

(i) *Whitehead v. Meth. Prot. Ch.*, 2 *M'Car.* (N. J.), 135; *Newark L. & C. Co., v. Morrison*, 2 *Beas. Ch.*, 133.

Chap. 100; mechanic's lien; owner is protected in making payments to the principal contractor, in accordance with his contract, unless notified of claims of sub-contractors before such payments are due; *Stewart v. Wright*, **52-337**.

Chap. 100, § 7; the petition of a sub-contractor, to enforce a mechanic's lien, should show such an indebtedness on the part of the owner to the contractor, at the time of the sub-contractor's account commenced, or later, as will justify a decree; *Martin v. Morgan*, **64-271**.

Chap. 100, § 3; mortgage foreclosed and property sold; mechanic's lien for materials furnished thereafter has no priority; *Shepardson v. Johnson*, **60-240**.

Chap. 100, §§ 3, 10, provides that a right to a lien upon improvements may exist without any contract with the owner of the fee, but, by contract with the owner of the improvements, *Lane v. Snow*, **66-545**.

Chap. 100, § 3; a mechanic's lien attaches to building and land for labor and material used in the construction of lightning rods thereon, without regard to their utility; *Harris v. Schultz*, **64-540**.

Chap. 100, § 6; mechanic's lien; blending of accounts, in such way as to claim a lien on a general balance much greater than is due for labor, apparent on the face of the statement filed; demurrable; *Stubbs v. R'y Co.*, **65-515**.

Chap. 100, § 6; mortgage for an antecedent debt, upon which time extended, recorded after one is entitled to a mechanic's lien, but before statement claiming the lien is filed and it filed after ninety days after the last of the material was furnished; in the absence of showing of knowledge of the right to a lien, the mortgage has a superior right; *Hoskins v. Carter*, **66-640**.

Chap. 100, §§ 6, 9; additions to a building, which become a part of the realty, are subject to a mortgage as against a subsequent mechanic's lien; *German Bk. v. Schloth*, **59-316**; *Curtis v. Broadwell*, **66-663**.

Chap. 102; embraces any sleight of hand performance, whether by three card monte or the use of cards or other devices; *State v. Quinn*, **47-360**.

Chap. 106, § 2; Code 1873, §§ 1490-2; decision of fence viewers with jurisdiction conclusive; they have jurisdiction as to sufficiency and value of hedge; *M'Keever v. Jenks*, **59-303**.

Chap. 106, § 2; recovery for value of one-half of hedge not defeated because at places it can not be grown, for short distance, because of nature of the ground; *M'Keever v. Jenks*, **59-303**.

Chap. 116; does not repeal Code, 1873, § 469, as a change of grade of streets in cities; *Phillips v. Council Bluffs*, **63-578**.

Chap. 123; certificate of clerk of election to be executed to county auditor before levy of a tax voted, under provisions of the statute, must contain all the particulars enumerated in the chapter, in addition to the notice under which the election was held; *R. R. Co. v. Hiams*, **53-502**.

Chap. 123; authorizing the voting of tax in aid of the construction of railroads is not unconstitutional and the fact that a corporation is organized to construct, also, a telegraph line will not invalidate a tax void, to aid the construction of its railroad; *Snell v. Leonard*, **55-554**.

Chap. 123; under this statute the aggregate amount of tax that can be voted by township, incorporated town or city, in aid of railroads, is five per cent. of the value of assessed property therein; that amount once voted the power to vote exhausted; *Dumphy v. Supervisors*, **58-274**.

Chap. 123; railroad aid tax; a finding and record of township trustees that a petition for an election to vote a tax was "signed by one half of the resident freehold tax payers" excludes the presumption of a finding that it was signed by a majority;

- a tax voted under submission on the record is absolutely void; *Slack v. Blackburn*, 64-374.
- Chap. 123; in estimating the aggregate amount to be voted or levied, in aid of railroads, by any township, town or city, the fact that a tax was collected under Statute 1871, ch. 102, is not to be considered; *Scott v. Union Co.*, 63-586.
- Chap. 123; railroad aid; tax voted by township is forfeited by the alienation of the road before completion; *Manning v. Mathews*; 66-678.
- Chap. 123; taxes voted to a corporation in aid of railroad construction, can not be collected by a corporation which has transferred its road, in pursuance of a purpose entertained from the beginning, of which the voters had notice before election held; *Blunt v. Carpenter*, 66-267.
- Chap. 123, as amended by Stat., 1878, ch. 173, as for taxation for the aiding of railroad construction, is constitutional; *C. Ill. & St. P. R'y Co. v. Shea*, 67-729.
- Chap. 123, § 3; to the effect that the aggregate of a railroad aid tax "to be voted or levied" shall not exceed five per cent. of the assessed value of the property of the township, should be read "to be voted and levied," and the limit of the tax is not exceeded by a second tax voted and levied after a prior levy had been set aside; *Williams v. Poor*, 65-414.
- Chap. 130, §§ 3, 4; township trustees purchasing land for a cemetery have a discretion as to its use and can not be compelled, by mandamus, to devote it to that purpose, if for any reason they deem it unsuitable; *Christy v. Whitmore*, 67-62.
- Chap. 140, § 1; the section does not authorize an appeal from the determination of board of supervisors as to what land is in the vicinity of a ditch and subject to assessment; *Lambert v. Mills Co.*, 58-668.
- Chap. 143; statute providing for establishment of superior courts in cities of certain grade not invalid; *Lytle v. May*, 49-228.
- Chap. 143, § 6; the jurisdiction of superior courts in cities runs throughout the county, save in the matter of appeals from J. P.; *Winet v. Berryhill*, 55-412.
- Chap. 143; circuit and superior courts in cities have concurrent jurisdiction of appeals from J. P. with the township in which the cities are located; *Hickox v. Nutting*, 55-404; so of writs of errors to J. P.; *Hickox v. R. R. Co.*, 55-432.
- Chap. 149, amending Code, 1873, § 1381, in effect, empowers counties, having a population of 33,000 inhabitants or more, to levy a tax of 1½ mills on the dollar in the event that the ordinary revenue proves insufficient for the support of the poor; it does not take away the power, under § 1381, in other counties, to levy a mill tax for the same purpose; *Lucas Co. v. R'y Co.*, 67-542.
- Chap. 163; appropriation for state university; the appropriation was absolute and unconditional; *State v. Sherman*, 46-420.

STATUTES, 1878.

- Chap. 56; not repeal Code, 1873, § 491, providing that city marshal's salary can not be diminished during his term; *Bryan v. Des Moines*, 51-592.
- Chap. 56; authorizing cities by ordinance to provide for paying salaries in lieu of fees to officers, not invalid; *Des Moines v. Hillis*, 55-649.
- Chap. 56; see Code, 1873, § 491, ante.
- Chap. 59; the property of telephone companies is to be assessed as telegraph property is; i. e., by the state board of equalization; city board of equalization has no power to assess the same; *Tel. Co. v. Bd. of Equalization*, 67-231.
- Chap. 77, § 13, as to extortion or unjust discrimination by railroad companies is to be strictly construed, whereof it is limited the extortion and discrimination in mailing charges; the penalty is not recoverable on a refusal or failure to furnish cars under § 10; *Bond v. W., St. L. & P. Ry. Co.*, 67-714.
- Chap. 78, provision that tax provided for by this section, to pay water rates, shall not be levied on property beyond limit of benefit from water works authorized to be constructed, not invalid; *Grant v. Davenport*, 36-405.

- Chap. 89; the special term of court authorized is a distinct term; not continuation of regular term preceding, for the purpose of settling bills of exception, under Code § 2831; *Dryden v. Willis*, 54-668.
- Chap. 118 (amending Code, 1873, § 2590, subd. 5); change of venue from the county is not allowed in cases appealed from justices to the circuit court; *Ardery v. R'y Co.*, 65-725.
- Chap. 119; prohibiting sale of liquors within two miles of corporate limits of any municipality; not invalid; *State v. Shroeder*, 51-169; *Centerville v. Miller*, 51-712; *Toledo v. Edens*, 59-354.
- Chap. 119; in a prosecution for the sale of intoxicating liquors, within two miles of city limits, under an ordinance under the statute, it is sufficient to show a sale made within two miles of the territory over which the city exercises jurisdiction for city purposes with claim of right; such limits may be shown by parol; *Albia v. O'Harra*, 64-299.
- Chap. 144; see Code, 1873, § 2742, ante.
- Chap. 145; substitute for Code, 1873, § 2742, relates to manner of trial of equitable actions; does not apply to actions commenced before its enactment; *Schmeltz v. Schmeltz*, 52-513.
- Chap. 145; as to trial of equitable actions, applies to pending actions not tried when the statute took effect; *Bailey v. Malvin*, 53-372.
- Chap. 145; repealed by Statute, 1878, ch. 144, as to trial of equitable actions, applies only to cases tried below since statute in force; *Simondson v. Simondson*, 50-111; *Joliet Iron etc. Co. v. R. R. Co.*, 50-458; *Trebon v. Zuraff*, 50-181; *Hunt v. Downs*, 50-697.
- Chap. 145; for trial de novo on appeal all evidence offered on trial should be certified up; it is not sufficient to certify all evidence introduced; *Taylor v. Kier*, 54-640; *Overhold v. Esmay*, 54-749; *Argall v. Pugh*, 56-399; *Tuttle v. Story Co.*, 56-317.
- Chap. 145; amending Code, 1873, § 2742; where either party elects to take testimony in form of depositions, the appearance term can not be the trial term for action to foreclose mortgage and other actions stated in Code, 1873, § 2745; *Holbrook v. Fahey*, 51-407.
- Chap. 145; trial of equity cause, oral testimony ordered reported by means of short hand and so done, the notes made a part of the record by order of court, afterward transcribed and certified by the trial judge on transcript certified by the reporter; compliance with statute to give trial de novo on appeal; *Ross v. Loomis*, 64-434.
- Chap. 145; taking stenographic notes of oral testimony, is not trial on written evidence under this statute; *Godfrey v. M'Kean*, 54-129.
- Chap. 145; certificate of evidence on trial of equitable action to be made at trial term or ensuing vacation; made two terms after trial and by successor of trial judge insufficient on appeal; *Cornell v. Cornell*, 54-368.
- Chap. 162; empowers cities of the first class to create one sewerage district for the entire city; *Grimmell v. Des Moines*, 57-147.
- Chap. 162, collection of a tax for sewerage purposes under city ordinance should be enjoined, because the act and ordinance did not provide for notice of the assessment to property owners affected; *Gatch v. Des Moines*, 63-725.
- Chap. 163, § 1; accused testifying in his own behalf in criminal case; comments on his testimony allowable, as in case of any other witness; *State v. Tatman*, 59-475.
- Chap. 169 amending Stat. 1876, ch. 47, § 4, exempts agricultural tracts, of more than ten acres, at the time it took effect, included in a city, from taxation for city purposes; *Winzer v. Burlington*, 68-282.
- Chap. 173, for taxation, of cities, towns and townships, in aid of the construction of railroads, constitutional; *Chi., M. & St. P. Ry. Co. v. Shea*, 67-729.
- Chap. 169; see Stat., 1876, ch. 47, § 4, ante.

STATUTES, 1880.

- Chap. 12, § 5; amending Code, 1873, § 1873, limiting the amount of attorney's fee, taxable as costs on foreclosure of school fund mortgage, to \$25 applies to mortgages executed prior to its enactment; Kossuth Co. v. Wallace, **60**-509.
- Chap. 25; livery stable keeper's lien attaches to property exempt from execution; Munson v. Porter, **63**-455.
- Chap. 32, must be interpreted as authorizing highways of width greater than sixty-six feet; Linn Co. v. Hewitt, **55**-307.
- Chap. 58; notice to be served on principal defendant must be served ten days before issue tried or, in absence of issue, ten days before judgment against garnishee; no jurisdiction without such notice; Williams v. Williams, **61**-613.
- Chap. 58; amending Code 1873, § 2975, original notice in an action does not avail for the purpose of garnishment; to render a valid judgment against garnishee notice of the garnishment must be served on the principal defendant; Wise v. Rothschild, **67**-85; Williams v. Williams, **61**-612.
- Chap. 58; see Code, 1873, § 2975; ante.
- Chap. 75; the design of the statute is to prohibit persons not registered as pharmacists from engaging in the responsible business of buying and selling drugs as dealers; an unlicensed pharmacist, conducting a drug store, is not to be exempted from the penalty for selling intoxicating liquor because his clerk who sold is licensed; State v. Norton, **67**-641.
- Chap. 75; see Code, 1873, §§ 1523-59, ante.
- Chap. 75, § 8; see Stat., 1884, ch. 143, post.
- Chap. 75, see Code, 1873, § 1523-59, as to intoxicating liquors, ante.
- Chap. 96; see Code, 1873, § 464 etc., ante.
- Chap. 109, § 1, amending Code, 1873, § 881; limits the time to appeal from the action of township boards of equalization to sixty days from the adjournment of the board, and applies to an appeal had prior to the enactment; Slocum v. Fayette Co., **61**-171.
- Chap. 109; actual notice and appearance and argument of the question, binds to an increase of assessment of tax although the statutory notice be not served or posted; Hutchinson v. Bd. of Equaliz., **66**-37.
- Chap. 109; where the person whose assessment is proposed to be raised, appears without the notice herein required, he can not afterward object that he was not notified; Henkle v. Keota, **68**-340.
- Chap. 109, see Code, 1873, § 831, ante.
- Chap. 111, school districts; boundaries of an independent district may be changed, and such change may include territory which became part of such independent district at the time of its formation; Albin v. Bd. of Directors, **58**-80.
- Chap. 130, § 5; does not abridge the right of challenge of grand jurors; State v. Osborne, **61**-332.
- Chap. 130, § 3; see Code, 1873, § 4421, ante.
- Chap. 130, § 5; supersedes Code, 1873, § 4421, so far as to render a witness, whose testimony has been properly taken and returned by the examining magistrate and whose name has been placed on the indictment, a competent witness without having testified before the grand jury; State v. Rodman, **62**-458.
- Chap. 146, providing the manner of appropriating and payment of money by incorporated towns is but as to matter of administration; it does not necessitate that an action for tort shall be preceded by presentation of a claim to the city or town council; Green v. Spencer, **67**-412.
- Chap. 146; see Code, 1873, § 489, ante.
- Chap. 151, § 5 requiring physicians and midwives to report births and deaths under penalty, not unconstitutional; Robinson v. Hamilton, **60**-135.
- Chap. 151; board of health of city empowered to bind county to pay for materials used, by its direction, in building a pest house to prevent the spread of contagious

- disease; semble, such cost not chargeable to infected persons therein confined; *Staples v. Plymouth Co.*, **62-365**.
- Chap. 151; township trustees, as a board of health, can not delegate their power to employ a physician, nor can they ratify an unauthorized employment, save when acting as a body and before services rendered; *Young v. Black Hawk Co.*, **66-463**.
- Chap. 151, § 21; county liable for expenses incurred by a board of health, in the case of a person afflicted with small pox, only when he, or those who are liable for his support, are unable to make compensation; *Gill v. Appandose Co.*, **68-21**.
- Chap. 162; amending Code, 1873, § 2352, relating to conveyances of real estate by foreign executors etc., operates only to effectuate the intention of the parties; *Smith v. Callaghan*, **66-555**.
- Chap. 163; demand before justice \$40, judgment for \$24; amount in controversy \$40, and circuit court has jurisdiction of appeal; *Lundak v. R'y Co.*, **65-473**; *Perry v. Conger*, **65-590**.
- Chap. 185, § 3; in order to recover an attorney's fee, on a note or contract providing therefor, the affidavit required by the section, must be filed at the time the original petition in the cause is filed; *Wilkins v. Troutner*, **66-558**; *Sweney v. Davidson*, **68-392**.
- Chap. 191, providing that railroads may condemn land for the changing of streams is not unconstitutional, being a taking for a public use authorizing the exercise of the right of eminent domain; *Reusch v. R. R. Co.*, **57-690**.
- Chap. 195, amending Code, 1873, § 3777; short hand notes of reporter, filed and incorporated into bill of exceptions; long hand copy made in transcript; substantial compliance with statute; *M'Annulty v. Seick*, **59-587**.
- Chap. 202, § 15, was designed to prevent intermeddlers from doing the things therein prohibited and not to prevent employes from performing duties which are within the letter of the statute; thus a conductor of a train of cars in a coal mine may ride thereon in performing a duty; *Crabell v. Coal Co.*, **68-752**.
- Chap. 207; limits the payment of witness fees in criminal case (Code, 1873, § 3814) to such witnesses in all courts (including J. P.) only as are subpoenaed by order of court or judge in which the case pending; *Kennedy v. Delaware Co.*, **59-124**.
- Chap. 211, insurance; has no application where proof of loss in neither made nor waived within the time limited by the policy of insurance; *Cornett v. Ins. Co.*, **67-392**.
- Chap. 211, § 2; incompetent, in action on a policy of insurance, to plead or prove statements by insured in his application, unless the statements are written and a copy thereof attached to or indorsed on policy; *Ellis v. Ins. Co.*, **64-511**.

STATUTES, 1882.

- Chap. 35; no trial de novo, on appeal, unless the evidence is certified within the time allowed for an appeal, unless, by agreement, it is shown the abstract contains all the evidence; *Preston v. Hale*, **65-409**.
- Chap. 35; certificate of evidence in equitable action may be made within the time allowed in which to appeal; *Marshalltown v. Forney*, **61-582**.
- Chap. 35, § 1; to authorize trial de novo on appeal judge's certificate must show the date of its execution or appellant must aver that it was executed within the prescribed time; *Mitchell v. Lamb*, **59-37**.
- Chap. 35; cause triable as an equitable action; order that it be tried on written evidence unnecessary; *Ross v. Loomis*, **64-434**; *Howe v. Jones*, **66-100**.
- Chap. 35; but for trial de novo the judge must certify the evidence; *Porter v. Everett*, **66-280**.
- Chap. 49, amending Code, 1873, § 3072; defendant in execution does not waive his right to hold property exempt from execution by a failure to assert his claim when he learns of its seizure, unless the officer requires him to designate the property which he claims to be exempt; *Ellsworth v. Sarre*, **67-450**.

Chap. 111; legalizing school officers' contracts for insurance of school buildings and orders given therefor, not intended to render district liable for personal obligations of district officers; *Ins. Co. v. Stratton*, 59-697.

Chap. 120, to legalize the action of the county superintendent in changing the boundaries of school districts is not invalid; but, such statute can not be allowed to deprive a district, from which territory is detached, of taxes due and collectible when the act passed; *Ind. Dist. v. Ind. Dist.*, 62-619.

STATUTES, 1884.

Chap. 15 (see Code, 1873, §§ 801, 812-3, 821), authorizes and requires shares of bank stock to be assessed to their owners; *Henkle v. Keota*, 68-339.

Chap. 21, see Stat., 1880, ch., 202, ante.

Chap. 23, since this act took effect a pensioner might make a gift of his pension money and the owner might hold the same, or property purchased therewith, as against donor's creditors; *Goble v. Stephenson*, 68-270.

Chap. 43, does not deprive one whose property is seized under a writ of attachment against another of his actions, but, only requires written notice of his claim as a prerequisite of action; it is not unconstitutional, as taking property without due process of law; *Cheadle v. Guittar*, 68-681.

Chap. 143, enacts a general prohibitory law; wherefor, licensed pharmacists may not (Dec. 1885) sell intoxicating liquors without a permit; *State v. Bissell*, 67-617.

Chap. 143, as to the sale of intoxicating liquors, is not invalid as embracing more than one subject or as not having a uniform operation; *Martin v. Blattner*, 68-290; nor as imposing involuntary servitude not in punishment of crime; *Id.*, 292.

Chap. 143, § 8; one who holds a permit to manufacture or sell intoxicating liquors and who fails to make return of sales on the last Saturday of each month, or within five days thereafter, becomes liable, with his sureties, on his bond for the penalty prescribed; *State v. M'Entee*, 68-382.

Chap. 143, § 11; in relation to the keeping and sale of liquors; a justice of the peace has jurisdiction of the "first offense;" *Albertson v. Kreichbaum*, 65-16.

Chap. 143, § 12; authorizing any citizen of a county where a nuisance is kept, in the form of a place used for the unlawful sale of intoxicating liquors, to maintain an action in equity and enjoin it, is not invalid; *Littleton v. Fritz*, 65-480; *Pontius v. Winebrenner*, 65-502.

Chap. 143, § 12; the right of action to enjoin the keeping of a nuisance—a place for the unlawful sale of liquors—is confined to a citizen of the county; *Applegate v. Winebrenner*, 66-68.

Chap. 158, see Code, 1873, § 431, ante.

Chap. 158; see Stat., 1876, ch. 47, ante.

Chap. 202; appropriating \$5,000 to the use of the Farmers Protective Association, in defending certain actions brought against it for the alleged infringement of patent rights in respect of barbed wire, not unconstitutional; *Barb Wire Co. v. Brown*, 64-277.

Chap. 60; to legalize an ordinance passed by the council of Burlington, Nov. 8, 1880, unconstitutional, as being a local or special law where a general law can be made applicable; *Ind. Sch. Dist. v. Burlington*, 60-504.

Chap. 63; limiting right of appeal from J. P. to cases of controversy over \$25, not unconstitutional; *Higgins v. Ins. Co.*, 60-51.

Chap. 70, § 2; making it a misdemeanor to release distrained stock; the word "stock" includes "swine;" *State v. Clark*, 65-338.

Chap. 75; creating a board of pharmacy, not void as delegating legislative power; *Hildreth v. Crawford*, 65-342.

Chap. 75, §§ 8, 9; a pharmacist's license may be revoked for the unlawful sale of intoxicating or alcoholic liquors; *Hildreth v. Crawford*, 65-344.

Chap. 75, § 8; a pharmacist's license may be revoked for a single unlawful sale of intoxicating liquor; *Hildreth v. Crawford*, 65-344.

Chap. 75 does not repeal Code, 1873, title 11. chap. 6, except, possibly, so far as necessary to allow sales by registered apothecaries of intoxicating liquors for medicines; *State v. Mercer*, 58-183.

Chap. 75; pharmacy law; prosecution under the statute, for the sale of intoxicating liquors as a beverage, within the jurisdiction of J. P.; *State v. Knowles*, 57-672.

Chap. 96, see Code, 1873, § 464, ante.





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